110-7

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 801.

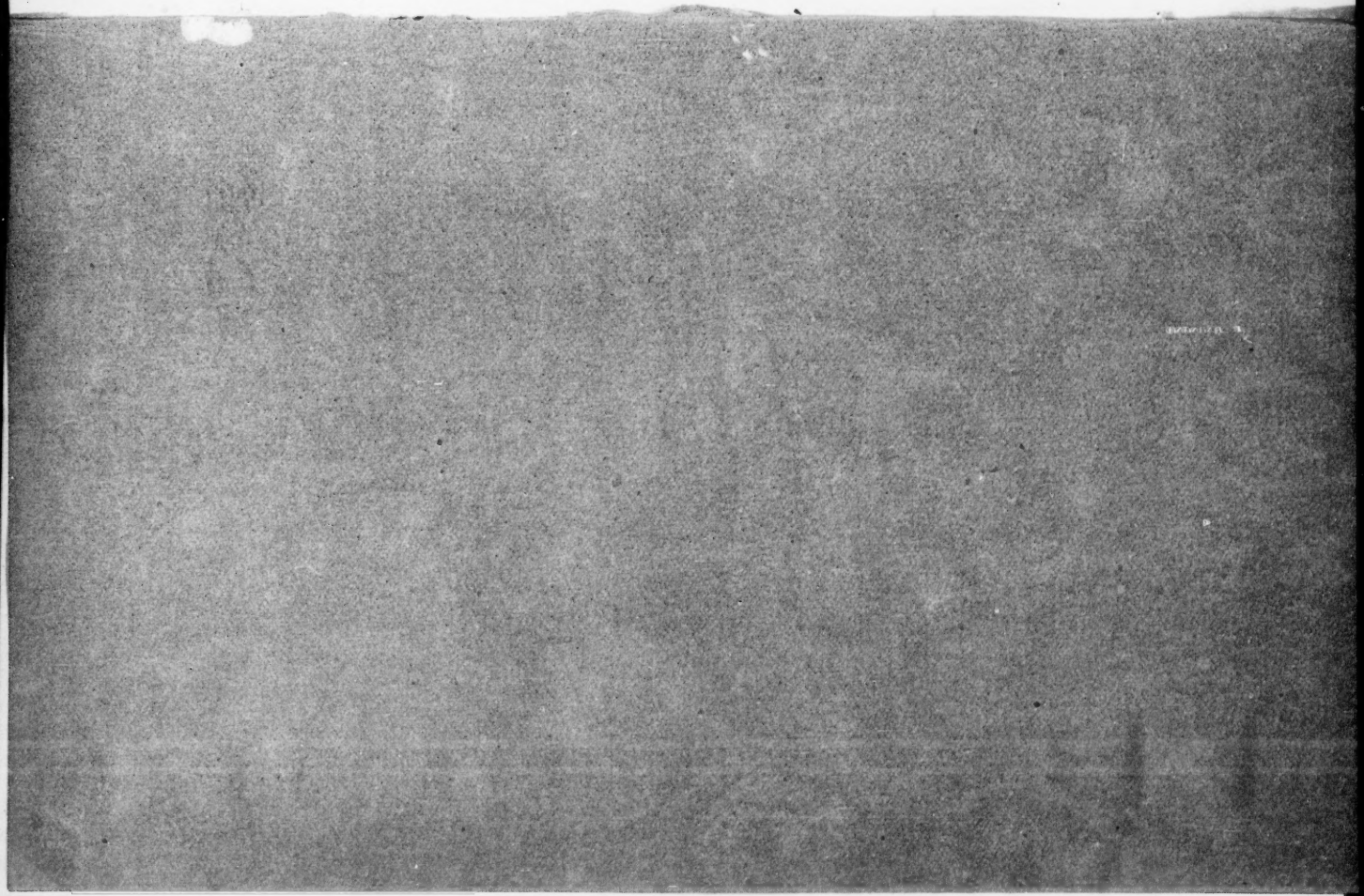
ALPHONSO L. MARTIN, SHERIFF OF DAVIESS COUNTY, MISSOURI, WILLIAM W. CLEVENGER, SHERIFF OF CALDWELL COUNTY, MISSOURI, AND THE DAVIESS COUNTY SAVINGS ASSOCIATION, OF GALLATIN, MISSOURI, APPELLANTS,

vs.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND WILLIAM H. KANE, TRUSTEES UNDER THE WILL OF HENRY R. REMSEN, DECEASED, LEW E. DARROW, GEORGE W. FRANK, AND DAVID W. McNAIR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 29, 1882.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 801.

ALPHONSO L. MARTIN, SHERIFF OF DAVIESS COUNTY, MISSOURI, WILLIAM W. CLEVENGER, SHERIFF OF CALDWELL COUNTY, MISSOURI, AND THE DAVIESS COUNTY SAVINGS ASSOCIATION, OF GALLATIN, MISSOURI, APPELLANTS,

vs.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND WILLIAM H. KANE, TRUSTEES UNDER THE WILL OF HENRY R. REMSEN, DECEASED, LEW E. DARROW, GEORGE W. FRANK, AND DAVID W. McNAIR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from State court, case No. 337; filed	1	1
Caption	1	1
Notices for injunction	2	1
Petition for injunction	5	4
Bond for injunction	15	10
Order for injunction	16	10
Injunction writs	18	11
Motion of defendants to strike out parts of petition	21	13
Ruling on motion to strike out	25	15
Defendants' first bill of exceptions	26	16
Defendants' demurrer	27	16
Order overruling demurrer	28	17
Answer	28	17
Replication	36	22
Demurrer to replication	38	23

	Original.	Print.
Transcript from State court, &c.—Continued.		
Petition for removal of cause	39	23
Bond for removal of cause	42	25
Order removing cause to circuit court United States	43	26
Clerk's certificate	44	27
Demurrer heard	45	27
Demurrer sustained and leave granted to amend bill	45	27
Amendment to bill	45	28
Demurrer to amend bill filed and submitted	46	28
Demurrer	46	28
Admission of defendants	50	30
Leave to answer	50	30
Stipulation of counsel as to costs, depositions, &c	51	31
Replication	52	31
Answer	52	31
Stipulation allowing defendants to strike out parts of answer	60	36
Stipulation as to facts	61	36
Waiver of answer under oath	61	37
Motion to suppress depositions	62	37
Stipulation to consolidate cases No. 336 and No. 337, &c	65	38
Amended answer filed	65	38
Amended answer	66	39
Reply to amended answer	73	43
Order consolidating causes	74	43
Transcript from State court in case No. 336	75	44
Caption	75	44
Notice for injunction	75	44
Petition	77	45
Order for injunction and bond	83	49
Bond	84	49
Petition for removal of cause	86	49
Bond for removal of cause	88	52
Demurrer	89	52
Order for removal of cause to circuit court United States	91	54
Clerk's certificate	92	54
Answer	93	55
Replication	97	57
Amended bill	98	57
Answer to amended bill	111	64
Replication	127	72
Hearing	129	73
Final decree	130	73
Testimony:		
Plaintiffs' abstract of evidence	134	75
Agreement as to evidence	134	75
Stipulation as to corporate capacity of defendant	134	75
William S. Abell	135	75
Benton Miller	151	89
William C. Gillihan	152	90
Samuel T. Brossius	156	92
Thomas J. Brown	159	94
Jeff Davis	161	95
Lew E. Darrow	167	99
Stipulation as to replication	183	108
Robert L. Tomlin	183	108

	Original.	Print.
Testimony—Continued.		
John A. Tuggle	196	115
Patrick S. Kenney	202	118
James Henry	203	119
Robert L. Tomlin (second deposition)	204	120
Plaintiffs' testimony:		
Deposition of Jeff Davis	206	121
Robert L. Tomlin	228	134
William S. Abell	249	144
Benton Miller	283	169
William C. Gillihan	286	171
Samuel T. Brossius	304	186
Thomas J. Brown	307	188
Defendants' abstract of evidence	311	190
Robert L. Tomlin	311	190
Patrick S. Kinney	318	194
James Hemry	321	195
Robert L. Tomlin (second deposition)	324	197
James H. B. McFerran	335	202
Defendants' testimony:		
Notice	344	207
Agreement	344	207
Deposition of Robert L. Tomlin	349	210
John A. Tuggle	383	227
James H. B. McFerran	402	237
Patrick S. Kinney	414	244
James Hemry	421	247
Lew E. Darrow	430	252
Exhibit A. (Missouri farm bond and coupons)	457	267
B. (Deed of trust, Kenney and wife to Webb *et al.*, trustees)	462	270
C. (Letter of Gillihan & Brossius to Frank & Darrow, July 1, 1879)	468	274
D. (Letter of G. & B. to F. & D., July 5, 1879)	469	274
E. (Telegram, Tomlin to F. & D.,)	470	275
G. (Letter, Darrow to Tomlin, July 21, 1879)	470	275
F. (Letter, Tomlin to Darrow, July 18, 1879)	471	275
H. (Letter, Tomlin to F. & D.,)	472	276
I. (Letter, F. & D. to Tomlin, July 25, 1879)	474	277
J. (Letter, Tomlin to F. & D., July 28, 1879)	475	278
K. (Letter, Darrow to Tomlin, July 31, 1879)	476	278
L. (Letter, F. & D. to Tomlin, August 1, 1879)	477	279
—. (Letter, F. & D. to Tomlin, August 9, 1879)	478	279
N. (Letter, Tomlin to F. & D., December 20, 1879)	479	280
O. (Ten notes of Kenney, $100 each)	479	280
P. (Trust-deed, Kenney and wife to McNair, &c., July 1, 1879)	483	283
B. Deed of trust, Kenney and wife to Darrow *et al.*, July 1, 1879)	489	286
A. (Bond and coupon)	493	288
—. (Petition and summons case of Webb *et al.*, trustees, &c., *vs.* Kenney and wife)	494	289
B. (Deed of trust, Kenney and wife to McNair *et al.*, July 1, 1879)	500	292
A. (Copy of coupon No. 2)	504	294

	Original.	Print.
Defendants' testimony—Continued.		
Exhibit —. (Petition and summons case of Frank & Darrow *vs.* Kenney and wife)	505	295
Petition case of Webb *et al.*, trustees, &c., against Martin, sheriff, &c., *et al.*, circuit court Caldwell County	511	298
Affidavit of Robert L. Tomlin	523	305
Appeal bond filed and approved and appeal granted	524	305
Appeal bond	524	306
Stipulation of counsel as to dates, &c	528	307
Tabular statement (facing 309)	530	
Clerk's certificate	531	309

1 UNITED STATES OF AMERICA, *set:*

Pleas and proceedings had before the circuit court of the United States for the western division of the western district of Missouri, in the case of Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, complainants, against Alphonzo L. Martin, sheriff of Daviess County, Missouri, and William W. Clevinger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, of Gallatin, Daviess County, Missouri, defendants. In chancery.

Be it remembered that heretofore, to wit, in vacation of said circuit court of the United States and on the 27th day of April, A. D. 1881, the following entry was made on the order-book of said court, to wit:

A. S. WEBB ET AL.
against
A. L. MARTIN ET AL. } No. 337.

This day there is received and filed herein a transcript of proceedings in the above cause from the circuit court of Caldwell County.

Said transcript is in words and figures as follows, to wit:

STATE OF MISSOURI,
County of Caldwell, ss:

Pleas before the circuit court of Caldwell County at term begun and holden in the town of Kingston, county and State aforesaid, on the 28th day of February, 1881, before the honorable James M. Davis, judge of the seventeenth judicial circuit of the State of Missouri.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,
2 *against*
ALPHONZO L. MARTIN, SHERIFF OF Daviess County, Missouri, and William W. Clevinger, sheriff of Caldwell County, Missouri, Daviess County Savings Association, of Gallatin, Daviess County, Missouri, defendants.

Be it remembered that heretofore, on the 17th day of June, 1880, in vacation, a notice for a writ of injunction against the above-named defendants was filed in the above-entitled cause in the office of the clerk of the circuit court in and for the county of Caldwell, in words and figured following, to wit:

Notice for Injunction.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND Wm. H. Kane, trustees, plaintiffs,
against
ALFONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, and the Daviess County Savings Association, of Gallatin, Daviess County, Missouri, defendants.

In the circuit court, Caldwell County, Missouri. In vacation. June 15, 1880.

To the above-named defendants:

You are hereby notified that a petition in the above-entitled cause, praying for an injunction enjoining you from selling the following described real estate, situate in the county of Caldwell, State of Missouri, to wit: S. half sec. 3; S. half sec. 4; N. half NE. quarter, SW. quarter NE. quarter, E. half NW. quarter, & NW. quarter SE. quarter, sec. 9; E. half NE. quarter, NW. quarter NE. quarter, & N. half NW. quarter, sec. 10—all in township 57, range 29, containing 1080 acres by Government survey, will be presented to the honorable E. J. Broaddus, at the court-house, in the city of Chillicothe, Livingstone County, Missouri, on Thursday, June 17, 1880, at 10 o'clock, a. m., said real estate being advertised by you 3 for sale on the 22nd day of June, 1880, at the court-house in Callatin, Daviess Co., Mo. That said petition will ask that said writ enjoin you from selling under any other or different trust-deeds said real estate, or any part thereof, for the debt secured by said trust-deed or any other indebtedness now or heretofore existing from Patrick S. Kenney to the Daviess County Savings Association aforesaid, and of its officers or assigns. Dated June 15, 1880.

GILLIHAN & BROSSIUS, & STUART BROS.,
Att'ys for Plaintiffs.

STATE OF MISSOURI,
County of Daviess, ss:

I, James T. Allen, coroner of Daviess County, Mo., hereby certify that I executed the within notice by delivering into the hands of Alphonzo L. Martin, sheriff of Daviess County, Mo., a true and perfect copy of the within notice; and by delivering into the hands of Robert L. Tomlin, the cashier of the Daviess County Savings Association, a true and perfect copy thereof, he being the person and only person in charge of the Banking Association of the Daviess County Savings Association, in the office of said association, in Gallatin, Mo.

All done at Gallatin, the county of Daviess, Missouri, this June 15th, A. D. 1880.

JAMES T. ALLEN,
Coroner of Daviess County, Mo.

Notice for injunction.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND Wm. H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,
against
ALFONZO L. MARTIN, SHERIFF OF DAVIESS CO., Mo., and the Daviess County Savings Association, of Gallatin, Daviess County, Mo., and Wm. W. Clevenger, sheriff of Caldwell Co., Mo., defendants.

In the circuit court, Caldwell County, Missouri. In vacation. June 15th, 1880.

To said defendant Wm. W. Clevenger, sheriff of Caldwell Co.:

4 You are hereby notified that you are made a defendant in the above-entitled cause, and that on Thursday, June 17th, 1880, at the hour of 10 o'clock a. m., a petition will be presented to the Hon. E. J. Broaddus, at the court-house, in the city of Chillicothe, Livingstone County, Missouri, asking, among other things, that you be enjoined by a writ of injunction to be ordered by said judge from selling the following described land, as trustee of the Daviess County Savings Association, on the following dates and places, and under deeds of trust described, to wit:

1st. On June 19th, 1880, at the court-house, in the town of Kingston, Missouri, under a deed of trust recorded in B. K., page 67, embracing the S. half sec. 3, & S. half sec. 4, in township 57, range 29, in Caldwell County, said deed being made by Patrick S. Kenney & wife to Robert L. Tomlin, trustee.

2nd. At same time and place, under deed of trust recorded in book K, page 3, made by Patrick S. Kenney to Cyrus S. McLaughlin, on the E. half NW. quarter, W. half NE. quarter, sec. 9, and S. half sec. 4, all in township 57, range 29, in Caldwell County, Missouri.

3rd. At the same place, on the 31st day of July, 1880, under a trust-deed made by Patrick S. Kenney to Robert L. Tomlin, conveying S. half sec. 4, the E. half sec. 9, the E. half NW. quarter sec. 9, the N. half sec. 10, & the NE. quarter NW. quarter sec. 10, all in township 57, range 29, Caldwell County, Missouri.

4th. At the same place, August 28th, 1880, under a deed of trust made by Patrick S. Kenney & wife to John Doolin, trustee, conveying the SE. quarter sec. 3, & E. half NE. quarter sec. 10, all in township 57, range 29, in Caldwell County, Missouri, said deed being recorded on page 15 of book K of the trust-deed records of said county.

5th. At the same place, on the 28th day of August, 1880, under a deed of trust made by Patrick S. Kenney & wife to Marcus A. Low,
5 recorded on page 84 of book G of the trust-deed records of Caldwell County, Missouri, and conveying the SE. quarter of sec. 3, & NW. quarter NE. quarter, & N. half NW. quarter sec. 10, and NE. quarter NE. quarter sec. 9, all in township 57, range 29, in Caldwell County, Missouri.

You can attend at said time and place and take such steps as you may deem proper and necessary.

Dated June 16, 1880.

GILLIHAN & BROSSIUS, & STUART BROS.,
Att'ys for Plaintiffs.

STATE OF MISSOURI,
County of Caldwell, ss:

I, Lew E. Darrow, hereby certify that I executed the within notice by delivering into the hands of L. B. Clevinger, deputy sheriff of Caldwell County, Missouri, a true and perfect copy of the within notice, the said Wm. W. Clevinger, sheriff, being absent from home and could not be found. Done at Kingston, in Caldwell Co., Mo., this 16th day of June, 1880.

LEW E. DARROW.

Petition for injunction.

And on the same day as last aforesaid, it being the 17th day of June, 1880, in vacation, a petition was filed in the above-entitled cause in words and figures following, to wit:

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,
against
ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, of Gallatin, Daviess County, Missouri, defendants.

In the circuit court of Caldwell County, Mo. In vacation. June 16th, 1880.

Plaintiffs state that they are trustees under the will of Henry R. Remsen, deceased, duly qualified and acting as such under the laws of the State of New York; that the defendant, Alphonzo L. Martin, is the acting
6 sheriff of Daviess County, Missouri, and that defendant, William W. Clevenger, is acting sheriff of Caldwell County, Missouri, and that the Daviess County Savings Association is a corporation duly organized and doing a general banking business at the city of Gallatin, Missouri, under an act of the general assembly of the State of Missouri, approved February 15, 1864, entitled "An act to organize savings associations and facilitate exchanges." Plaintiffs further state that Patrick S. Kenney, of the said county of Caldwell, was, on the 30th day of June, 1879, largely indebted to the defendant, The Daviess County Savings Association, which indebtedness was secured to said association by deeds of trust, executed by the said Patrick S. Kenney and Elizabeth, his wife, as follows:

One dated February 8th, 1872, to Marcus A. Low, for Leslie P. Barnum, trustee, on the following real estate, situate in the county of Caldwell and

State of Missouri, to wit: The SE. quarter of sec. 3; the NW. quarter of NE. quarter & the N. half of NW. quarter of sec. 10, and the NE. quarter of NE. quarter of sec. 9, all in township 57, of range 29, in all 320 acres, to secure the sum of $3,000, at ten per cent. interest, which said indebtedness & trust-deed was then held by the defendant, The Daviess County Savings Association, as the assignee of said Leslie P. Barnum. One to Cyrus S. McLaughlin, trustee for Solomon Musser, dated November 17th, 1873, on the following real estate, to wit: The E. half of NW. quarter & the W. half of NE. quarter of section 9, & the S. half of section 4, all in township 57, of range 29, to secure the sum of $2,112.52 and interest at ten per cent., which said indebtedness and trust-deed had been assigned to and was then held by the said Daviess County Savings Association. One dated Dec. 20th, 1873, to John Doolin, trustee for Nicholas Quirk, on the following lands, to wit: The SE. quarter of sec. 3 and the E. half of NE. quarter of sec. 10, all in township 57, range 29, to secure
$1,650.00 and interest at ten per cent., which said trust-deed
7 and debt had also been assigned to and was held by the said Daviess County Savings Association. One dated August 28th, 1874, to Robert L. Tomlin, trustee for the Daviess County Savings Association, on the following lands, to wit: The S. half of sec. 3 & the S. half of sec. 4, all in township 57, range 29, to secure to said defendant the sum of $5,036.80 and interest at ten per cent. One dated Sep. 21st, 1874, to Robert L. Tomlin, trustee of the sefendant, the D. C. S. A, on the following described lands, to wit: N. half sec. 10 & the N. half of section 4, township 57, range 29, to secure to the said Daviess County Savings Association the sum of $5,792.20 and interest thereon at ten per cent. One dated May 24th, 1875, to Robert L. Tomlin, trustee for the Daviess County Savings Association, on the following lands, to wit: The S. half of sec. 4 and the E. half of sec. 9, and the E. half of NW. quarter of sec. 9 & the N. half & the NE. quarter of NW. quarter of sec. 10, all in township 57, of range 29, to secure $8,013.13 and interest at 10 (ten) per cent., due and payable to said defendant. And one dated April 1st, 1876, to Wm. C. Gillihan and Samuel T. Brossius, trustees for the said defendant, The Daviess County Savings Association, on the following lands, to wit: S. half sec. 3 & S. half sec. 4, & N. half NE. quarter & SW. quarter NE. quarter & E. half of NW. quarter of sec. 9, and the E. half of NE. quarter & NW. quarter of NE. quarter, & N. half of NW. quarter of sec. 10, & the S. half of NW. quarter & SW. quarter of NE. quarter of sec. 10, and the NW. quarter of SE. quarter of sec. 9, all in township 57, range 29, to secure $4,889.65 and interest at ten per cent., then due and payable to said defendant; all of said lands in all of said deeds of trust being in the county of Caldwell, in the State of Missouri; and all of said trust-deeds being there properly recorded in said county, and at that time existing as valid liens on said lands and held by and for the
benefit of the defendant, the Daviess County Savings Association.
8 That prior to the execution of either of said deeds the said Patrick S. Kenney and his said wife executed and delivered unto Thomas Culligan, trustee for James D. Powers, a deed of trust on the S. half of sec. 3 and the E. half of SE. quarter of section 4, 57, 29, aforesaid, to secure a debt of $5,000.00 and ten per cent. interest thereon, which was a senior, prior, and superior lien on the lands therein described to either

of the deeds before mentioned of the Daviess County Savings Association, except the trust-deed to M. A. Low, trustee of Leslie P. Barnum; and that on the 15th day of July, 1875, the Exchange Bank of Breckenridge, Mo., obtained two judgments against said Patrick S. Kenney for the aggregate sum of $1,129.95 and ten per cent. interest from that date, which also remained on said June 30th, 1879, a lien prior and superior to the deed of trust aforesaid to William C. Gillihan, Samuel T. Brossius, for the benefit of said Daviess County Savings Association.

And on the 1st day of Nov., 1875, one Thomas Ryan also obtained a judgment against said Patrick S. Kennedy for the sum of $775.06, which also remained unpaid and a lien on said lands, prior, senior, and superior to the lien of said trust-deed to William C. Gillihan and Samuel T. Brossius, all of said judgments having been rendered by the circuit court of Caldwell County, Missouri. That on said 30th day of June, 1879, the said Daviess County Savings Association and Patrick S. Kenney, being desirous of preventing a sale of said lands on said judgments and trust prior and superior to the trust-deeds then held by the said Davies County Savings Association, which were being pressed for collection, caused said Kenney to apply through his agents to these plaintiffs for a loan of $10,000, to be secured by deed of trust on all of said lands; that plaintiffs at the solicitation of both of said parties, and relying on their statements, promises, and representations, agreed to loan said Kenney said $10,000, with the express agreement and understanding had and made by and between all of said parties, that all other liens and incumbrances should be re-
9 moved, released, and satisfied, and that plaintiff should have as security for said loan a trust-deed of all of said lands which should be prior, senior, and superior to all of said liens and claims of said defendant, the Davies County Savings Association, and all other liens. That relying alone on said agreement, statements, and representations of said Daviess County Savings Association and said Kenney, and in pursuance of the same, the plaintiffs did loan to Patrick S. Kenney the said sum of ten thousand dollars for the term of five years at the annual interest of eight per cent.; and at the instance and request of said Patrick S. Kenney and the Daviess County Savings Association, and in pursuance of said agreement, the same was paid and applied as follows, viz: $5,200.00 in satisfaction of the debt secured by the trust-deed to Thomas Culligan, trustee for James D. Powers, $1,689.86 in payment and discharge of the three judgments hereinbefore mentioned, and $3,110.14 to the defendant, the Daviess County Savings Association, and in pursuance of the said agreement the said Daviess County Savings Association formally cancelled and entered satisfaction of record of all of said trust-deeds to it belonging, where the same were recorded on the records of Caldwell County, Missouri, and plaintiff's said deed of trust executed and delivered by said Patrick S. Kenney and wife to Lew E. Darrow, trustee, on all of said lands was filed and properly recorded in the records of deeds of trust of said Caldwell County, after which said defendant, The Daviess County Savings Association, caused said Patrick S. Kenney to execute and deliver to it his note for the balance due it, viz, about thirty-five thousand dollars, and he and his wife to execute and deliver to it a deed of trust on said land securing said balance, which said deed of trust was executed, filed, and recorded subsequent to the recording of plaintiff's said trust-

deed, and which is still and now held and claimed by said Daviess County Savings Association as its property.

10 And plaintiff further states that said trust-deed expressly provides that it is and shall be second-junior, and subject to plaintiff's said deed of trust. That by said transactions each and every one of the debts secured by said trust-deeds, and each and every one of said trust-deeds of the Daviess County Savings Association, as also the other trust-deeds and judgments, were fully paid, cancelled, and satisfied, and were so treated by all the parties.

But plaintiffs now aver the truth to be that the said Patrick S. Kenney and the said Daviess County Savings Association have confederated and conspired together to swindle and defraud these plaintiffs, and to fraudulently disregard their agreement aforesaid, and in the face thereof and of the fact that plaintiffs fully relied on and accepted their statements and promises, to endeavor by unfair and dishonest means to destroy plaintiffs' said security, & make the same inferior to the aforesaid trust-deeds of said Daviess County Savings Association, which it now pretends as valid securities and to foreclose.

That said Daviess County Savings Association has fraudulently induced said Patrick S. Kenney to surrender and turn over to it the full and complete pos'ession of all of said lands under said pretended trust-deeds, and that it now holds the same as proprietor thereof, and the said Patrick S. Kenney has only a lien from said Daviess County Savings Association for said lands, and under which he now holds pos'ession.

That said savings association is proceeding to sell said lands under each and all of said pretended deeds of trust, and has advertised the said sales as follows:

Under the deed of trust to Marcus A. Low, for the benefit of Leslie P. Barnum, at Kingston, Caldwell County, Mo., on August 28th, 1880.

Under the deed to Cyrus S. McLaughlin, trustee of Solo-
11 mon Musser, at Kingston, Caldwell County, Mo., on June 19th, 1880.

Under the deed to John Doolin, trustee of Nicholas Quirk, at same place, and on Aug. 28th, 1880.

Under the deed of Robert L. Tomlin, trustee of said defendant, dated Aug. 28th, 1874, at same place, on June 19th, 1880.

Under the deed to Robert L. Tomlin, dated May 24th, 1875, at same place, on July 31st, 1880.

And under the deed to William G. Gillihan and Samuel T. Brossius, at Gaalatin, Daviess County, Missouri, on the 22nd day of June, 1880.

Notices of said sales are attached as Exhibits A, B, C, D, E, & F, and made parts hereof, and unless restrained said sales will take place, one of them very soon, and at a place where purchasers cannot examine the records as to the title of said lands, it being a different county, and thus deprive plaintiffs of their rightful security, and cause them to suffer great and irreparable damages, for which they have no adequate remedy at law.

That said Daviess County Savings Association now claim that said deeds of trust have never been and are not now satisfied and released in fact, but the same are still a lien valid and binding on all of said lands.

That said association having authorized and empowered Robert L. Tomlin, its cashier, to cancel and release said deeds of trust, and he hav-

ing fully released and cancelled the in pursuance of the agreements, promises, and understanding aforesaid, now claims and holds that said Rob't L. Tomlin, cashier of said association, acted beyond his power and authority in so releasing and satisfying said deeds of trust, and that his act in so doing is null and void and of no effect.

That if said sales are permitted to take place they will cast a cloud on plaintiffs' title to and interest in said lands, and will cause endless and expensive litigation.

12 That persons entirely innocent of the rights and interests of plaintiffs may buy said lands at said sales and may thus become uselessly and wrongfully involved in great trouble and litigation, and be put to great expense.

That if said defendant, The Daviess County Savings Association, is permitted to proceed with said sales, and to this cast a cloud on plaintiffs' title and interest in said land, it will be impossible for the trustee' under their trust-deed to sell the same and realize the money due or to become due to plaintiffs, or for plaintiffs by any other means to protect themselves and secure payment of their debt. And thus there will be done against plaintiffs a great legal wrong and for which they have no adequate remedy by an action for damages.

That the said Daviess County Savings Association have enjoined secrecy on a part of the trustees in said deed of trust as to the sales that it is now trying fraudulently and wrongfully to make thereunder and in which said trustees refused to act; and that it requested said trustees not to inform plaintiffs who are non-residents of the State, and live in the State of New York, of these proceedings aforesaid, thus attesting its design and willingness to overreach and circumvent plaintiffs and defraud them of their rights.

They therefore seek to bring all of the parties interested in this matter before this court, that the interests of each may be ascertained and settled.

That said Daviess County Savings Association, and said Patrick S. Kenney, still retain the ten thousand dollars loaned by plaintiffs and have not offered to repay the same or any part thereof; and the said Daviess County Savings Association still retains the deeds of trust and note of $36,680.30 made to it by said Kenney and wife, and there has been no offer on

13 the part of either of them to rescind said agreement or return to plaintiffs their money, and plaintiffs aver that this alone is a fraud in law against them, and attests the bad faith of said Daviess County Savings Association, and entitles plaintiffs to the relief that they will pray herein.

That the said Patrick S. Kenney is still indebted to the said Daviess County Savings Association in said sum of $36,680.30, less a payment of about three thousand dollars, and to these plaintiffs in the sum of $10,000.00 with a large amount of interest on both, and that he is insolvent and a suit at law against him would be unavailing.

That the entire capital stock of the Daviess County Savings Association amounts to the sum of five thousand dollars only, while it has invested in these lands alone over thirty-six thousand dollars, and will have over forty-six thousand dollars invested therein when it redeems from plaintiffs said trust deed.

That said trust deed of plaintiffs is not in default, and they cannot pro-

ceed to protect themselves by action of ejectment or any other remedy at law.

That just after executing and delivering to plaintiffs their said deed of trust, and prior to the execution of the deed of trust to the said Daviess County Savings Association, the said Patrick S. Kenney and wife executed and delivered unto David W. McNair, trustee for George W. Frank & Darrow, a deed of trust on all of said lands to secure the sum of $1,000 which said Kenney was to pay to said George W. Frank & Darrow for their services in negotiating said loan for him, and plaintiffs ask that said Geo. W. Frank & Darrow be made parties defendant hereto and required to plead that all questions and rights may be settled and disposed of in this case.

That the defendant', Alphonzo L. Martin and William W. Clev-
14 inger, are acting as the trustees of said Daviess County Savings Association, as the original trustees have refused to act, and that said parties have no other interest in this case.

Plaintiffs pray that the said defendants and each of them and all others who may be called upon to act may be forever enjoined from selling under each and all of said deeds of trust and proceeding further in any manner to foreclose the same; and that a temporary injunction issue to restrain them until the final hearing of this case.

That each of said pretended trust-deeds be declared satisfied and cancelled and *and* forever held for nought, and that plaintiffs' said trust-deeds be established as a first lien on all of said lands superior, prior, and senior to all pretended claims, liens, rights, and interests of said Daviess County Savings Association in, to, or upon said lands or any part thereof.

And for such other and further relief as shall upon honor seem equitable and just, including the holding of said defendant, the Daviess County Savings to a specific observance and performance of its contract.

Plaintiffs ask judgment for costs.

STUART BROS., &
GILLIHAN & BROSSIUS,
Att'ys for Plaintiffs.

I, Lew E. Darrow, on my oath say that I have heard read the foregoing petition and am acquainted with all the statements, allegations, and facts therein contained; that I acted as one of the agents of the said Patrick S. Kenney in negotiating the said loan of $10,000, and that I was intimately acquainted with all the facts and circumstances connected with the making of said loan and the arrangement for a first lien on said lands for the security thereof. I further say that the statements and al-
15 legations contained in the foregoing are true.

LEW E. DARROW.

STATE OF MISSOURI,
County of Livingston, ss:

The foregoing affidavit was subscribed in my presence and sworn to by Lew E. Darrow before me on this 17th day of June, 1880.

[L. S.] FRANK SHEETZ,
Notary Public.

Injunction bond.

And on the same day as last aforesaid, it being the 17th day of June, 1880, there was filed by plaintiffs in the above-entitled cause a bond in words and figures following, to wit:

Know all men by these presents that Albert S. Webb, Robert L. Belknap, and William H. Kane, as principals, and Lew E. Darrow, George W. Frank, William M. Tenny, and Sidney M. Williams, as their securities, are held and firmly bound unto Alphonzo L. Martin, sheriff Daviess County, Mo., William W. Clevinger, sheriff of Caldwell County, Mo., and the Daviess County Savings Association, of Gallatin, Daviess County, Missouri, in the sum of ten thousand dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators firmly by these presents. Signed with our names and sealed with our seals, and dated this 17th day of June, A. D. 1880.

The condition of the above bond is such that whereas Albert S. Webb, Robert L. Belknap, and William H. Kane, as plaintiffs, on the 17th day of June, 1880, obtained a restraining order or injunction against Alphonzo L. Martin, sheriff of Daviess County, Missouri, William W. Clevinger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, of Gallatin, Daviess County, Mo., restraining, enjoining, and inhibiting them and each of them from further proceeding to sell or dispose of the lands in the restraining order set forth or any part thereof.

16

Now, therefore, if the said Albert S. Webb, Robert L. Belknap, and William H. Kane, Lew E. Darrow, George W. Frank, William M. Tenny, and Sidney M. Williams shall pay all damages that may be occasioned by said restraining order or injunction, and abide the decision which shall be made therein, and pay all sums of money, damages, and costs that shall be adjudged against the Albert S. Webb, Robert L. Belknap, and William H. Kane, if the injunction order be dissolved, then the above obligation shall be void; otherwise to remain in full force and effect.

Given under our hands and seals this 17th day of June, A. D. 1880.

ALBERT S. WEBB.	[SEAL.]
ROBERT L. BELKNAP.	[SEAL.]
WILLIAM H. KANE.	[SEAL.]
LEW E. DARROW.	[SEAL.]
GEO. W. FRANK.	[SEAL.]
WM. M. TENNEY.	[SEAL.]
S. M. WILLIAMS.	[SEAL.]

The above securities approved by me this 17th day of June, A. D. 1880.

E. J. BROADDUS,
Judge 17th Judicial Circuit of Mo.

Order for injunction.

And the same day as last aforesaid, in vacation, it being the 17th day of June, 1880, there was filed in the clerk's office of said circuit court an order of injunction, in words and figures following, to wit:

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,

against

17 ALPHONSO L. MARTIN, SHERIFF OF Daviess County, Missouri, and William W. Clevinger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association of Gallatin, Daviess County, Missouri, defendants.

In the circuit court of Caldwell County, Missouri, in vacation, June 17th, 1880.

Now, on this 17th day of June, 1880, come Albert S. Webb, Robert L. Belknap, and H. Kane, plaintiffs in the above-entitled suit, and present their petition before me, E. J. Broaddus, judge of the 17th judicial circuit, in the State of Missouri, praying relief against said defendants, Alphonzo L. Martin, sheriff, William W. Clevenger, sheriff, and the Daviess County Savings Association of Gallatin, Daviess County, Missouri, and also praying a temporary injunction against the defendant and each of them to restrain the acts of the defendants in their petition specified and set forth; which petition being seen, heard, and duly considered, and it appearing to me that the said defendants have been served with notice of this application, and they each being represented and heard by their attorney, J. A. Holliday, and that plaintiffs, upon the facts stated in their said petition, are entitled to the relief prayed, it is by me ordered that an injunction issue directed to each of said defendants, enjoining and restraining them and each of them from further proceeding to sell or dispose of the following-described real estate situate in the county of Caldwell and State of Missouri, to wit:

The S. ½ of sec. 3, and the S. ½ of sec. 4, and the NE. ¼ of the NE. ¼, and the W. ½ of the NE. ¼, and the E. ½ of the NW. ¼, and the NW. 18 ¼ of the SE. ¼ of section 9, and the N. ½ and the NW. ¼ of the SW. ¼ of sec. 10, all in township No. 57, range 29, containing 1,240 acres of land, more or less, said lands being now advertised by said defendant for sale under certain deeds of trust claimed to be owned and held for the benefit of the defendant the Daviess County Savings Association; and the annexed bond having been approved by me, it is hereby or'ered that a writ of injunction issue against each and all of said defendants as aforesaid, which shall be served immediately, and shall be returnable at the October, 1880, term of the circuit court of Caldwell County, Missouri, and the clerk of said court will issue said writ of injunction in accordance with the terms of this order upon filing of bond with the securities approved by me.

E. J. BROADDUS, *Judge*.

Injunction writs.

Whereupon writs of injunction were issued on the above order on the 17th day of June, 1880, which said writs of injunction were returned executed on the 19th day of June, 1880.

Said writs and the returns thereon are in words and figures following, to wit:

The State of Missouri to Alfonzo L. Martin, sheriff of Daviess County, Missouri; William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association of Gallatin, Daviess County, Missouri:

Whereas it has been suggested to the Hon. E. J. Broaddus, judge of the circuit court of the 17th judicial circuit of the State of Missouri, that you, and each of you, are about to wrongfully and unlawfully sell and dispose of the following-described lands situated in the county of Caldwell, and State of Missouri, to wit: S. ½ sec. 3; S. ½ sec. 4; NE. ¼ of NE. ¼, and the W. ½ NE. ¼, and the E. ½ NW. ¼, and the NW. ¼ SW. ¼,
19 section 10, all in township 57, range 29; and whereas said judge has made an order that an injunction issue restraining you, and each of you, from selling said lands, or any parts thereof, and from in any other way meddling with said real estate, and from proceeding to foreclose by sale or otherwise any trust-deeds which you, or either of you, may hold or claim either as beneficiary or trustee on said lands, and has ordered that a writ of injunction issue herein: Now, therefore, these presents are to command you, and each of you, from further proceeding with the sale of said lands or any part thereof by virtue of any deeds of trust held by you, and under which you have advertised said lands for sale, and from otherwise selling or attempting to sell or dispose of said lands or any part thereof; and you are hereby enjoined and restrained from further proceeding to sell or dispose of said lands or any part thereof, or otherwise encumber the title thereto until the further order of this court herein.

This writ returnable to the fourth Monday in October, 1880.

I' witness whereof I have hereunto signed my name and affixed the seal of the Caldwell circuit court, at my office, in the town of Kingston, Caldwell County, Missouri, this 17th day of June, 1880.

[L. S.] WINFIELD MILLER,
Clerk Circuit Court, Caldwell County, Missouri.

We hereby acknowledge service of the foregoing writ upon us, a copy of the same having been delivered into our hands this June 19th, A. D. 1880.

THE DAVIESS COUNTY SAVINGS ASSOCIATION,
By R. L. TOMLIN, *Cashier.*
20 A. L. MARTIN, *Sheriff of Daviess County, Mo.*

Injunction writ.

The State of Missouri to Alphonso L. Martin, sheriff of Daviess County, Missouri, William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association of Gallatin, Daviess County, Missouri:

Whereas it has been suggested to the Hon. E. J. Broaddus, judge of the circuit court of the 17th judicial circuit of the State of Missouri, that you, and each of you, are about to wrongfully and unlawfully sell and dispose of the following-described lands situate in the county of Caldwell, and

State of Missouri, to wit: The S. ½ of sec. 3; the S. ½ of sec. 4; the NE. ¼ of the NE. ¼, and the W. ½ of the NE. ¼, and the E. ½ of the NW. ¼, and the NW. ¼ of the SE. ¼, of sec. 9; and N. ½ & NW. ¼ of the SW. ¼ of sec. 10, all in township 57, range 29; and whereas said judge has made an ordor that an injunction issue restraining you and each of you from selling said lands or any part thereof, and from in any other way meddling with said real estate and from proceeding to foreclose, by sale or otherwise, any trust-deeds which you, or either of you, may hold or claim either as beneficiary or trustee on said lands or any part thereof, and has ordered me to issue a writ of injunction accordingly;

Now, therefore, these presents are to command you and each of you from further proceeding with the sale of said lands or any part thereof under and by virtue of any deed of trust held by you, and under which you have advertised said lands for sale and from otherwise selling or attempting to sell or dispose of said lands or any part thereof.

And you are hereby enjoined and restrained from furthe' proceed-
21 ing to sell or dispose of the said lands or any part thereof, or otherwise encumber the title thereto until the further order of this court herein.

This writ returnable to the 3rd Monday in October, 1880.

In testimony whereof I have hereto signed my name and affixed the seal of the Caldwell circuit court, at my office, in the town of Kingston, Caldwell County, Mo., this 17th day of June, 1880.

[L. S.] WINFIELD MILLER,
Clerk Circuit Court, Caldwell County, Mo.

STATE OF MISSOURI,
County of Caldwell, ss:

Executed the within writ in the county of Caldwell, on the 19th day of June, A. D. 1880, by delivering a copy of the same to William W. Clevenger, the within-named defendant.

ANSON B. MILLS,
Coroner of Caldwell County, Mo.

Defendants' motion to strike out parts of petition.

And afterwards, on the 18th day of October, 1880, it being the first day of the October term of said circuit court for 1880, the following further proceedings were had in said cause, to wit:

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
ALPHONZO MARTIN ET AL., DEFENDANTS.

Now, on this day come the defendants, by their attorneys, and file motion to strike out certain parts of plaintiffs' petition, which said motion is in words and figures following, to wit:

ALBERT S. WEBB ROBERT L. BELKNAP,
22 and William H. Kane, trustees under the will of Henry R. Remsen, dec'd, plaintiffs,

against

ALPHONSO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, & Wm. W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, of Gallatin, Daviess County, Missouri, defendants.

In the circuit court of Caldwell County, Missouri, Oct. term, 1880.

FIRST COUNT.—Now at this day come the defendants, by their attorney, and move the court to strike out from plaintiffs' petition in the above-entitled cause all that part thereof included in brackets, thus [ ], and commencing on line 21, at page 13, of said petition, with the words, "After which said defendant," and ending on the 9th line of page 14 with the words, "and subject to plaintiffs' said deed of trust," for the following reasons:

1. Because the same is irrelevant and redundant matter.

2. Because it is immaterial to a final determination of the rights of the parties to this action in what manner the Daviess County Savings Association and said P. S. Kenney settled their business transactions.

3. Because said matter is surplusage, and the court could not allow plaintiffs to prove the same on hearing this cause.

SECOND COUNT.—Defendants further the court to strike from the plaintiffs' petition herein all that part thereof included in brackets,
23 thus [ ], and commencing at 2nd line of 15th page of said petition with the words, "That said Daviess County Savings Association had fraudulently," and ending with the words, "Which he now holds possession," on line 12 of page 15 of said petition, for the following reasons:

1. Because the same is immaterial, irrelevant, and redundant matter.

2. Because said P. S. Kenney had a right to sell and turn over the pos-'session of said land to defendant or any other person.

THIRD COUNT.—Defendant further prays the court to strike from plaintiffs' petition herein all that part thereof included in brackets, thus [ ], commencing on line 8 of page 16 of said petition, with the words, "One of them very soon, and at a place," and ending on 12th line of same page with the words, "It being in a different county," for the following reasons:

1. Because the same is immaterial, irrelevant, and redundant matter.

FOURTH COUNT.—Defendants further pray the court to strike from plaintiffs' petition all that part thereof included in brackets, thus [ ], commencing on 10th line of page 17th of said petition with the words, "That persons entirely innocent," and ending on the 15th line of the same page with the words, "And put to great expense," for the following reasons:

1st. Because the same is irrelevant and redundant matter.

2. Because the court will not entertain a proposition to protect the interests of all innocent people who may bid for land at sheriffs' sales.

FIFTH COUNT.—Defendants further pray the court to strike from
24 the plaintiffs' petition all that part thereof included in brackets, thus [ ], commencing on 31st line of page 17 of said petition with the words, "That the said Daviess County Savings Association have enjoined," and ending with the words, "And defraud them of their rights," on the 13th line of page 18 of said petition, for the following reasons:

1. Because the same is irrelevant and redundant matter.

2. Because the same is repugnant to other allegations in the petition.

3. Because plaintiffs charge in their petition that defendants advertised said lands for sale, and it is inconsistent and repugnant to further charge that the defendant The Daviess County Savings Association has endeavored to fraudulently conceal from plaintiffs a matter made public by advertisement in the newspapers.

6TH COUNT.—Defendants further pray the court to strike out all that part of plaintiffs' petition included in brackets, commencing at page 18, line No. 23 of petition, the words, "And the said Daviess County Savings Association," and ending with the words, "By said P. S. Kenney and wife," in line 27 of page 18 of said petition, for the following reason:

Because said averment is surplusage and redundant matter.

7TH COUNT.—And defendants further pray the court to strike out from plaintiffs' petition all that part thereof included in brackets, thus [ ], commencing with the words, "That just after executing and delivering to plaintiffs their said deed of trust," on 28th line of page 19 of said petition, and ending on line 13 of page 20 of said petition, with the words, "May be settled and disposed of in this cause," for the following reasons:

1. Because the same is irrelevant and redundant matter.

25 2. Because the said David W. McNair and George W. Frank and Darrow are not necessary parties to this action, and not identified in interest with the defendants.

3. Because said Darrow is assisting plaintiffs in the prosecution of this suit, as appears by his affidavit to plaintiffs' petition herein.

4. Because said proposed defendants are identified in interest with plaintiffs in this suit, as appears from the petition, and it nowhere appears that they have refused to suffer their names to be read as plaintiffs herein.

8TH COUNT.—Defendants further pray the court to strike out from plaintiffs petition all that part thereof including in brackets, thus [ ], commencing with the words, "That each of said pretended deeds of trust be declared satisfied," at line 30 of page 20 of said petition, and ending on line 7 of page 21, with the words, "into or upon said lands, or any part thereof," for the following reasons:

1. Because the same is redundant matter.

2. Because the same is repugnant to other allegations of the petition.

3. Because plaintiffs charge and aver in their petition that said deeds of trust have been cancelled and satisfied by the defendant The Daviess County Savings Association on the records of Caldwell County.

4. Because a court of equity will not enter up a decree in this cause cancelling and satisfying deeds of trust that have already been cancelled and satisfied according to law.

J. A. HOLLIDAY,
Att'y for Defendants.

Ruling on motion to strike out part petition.

And afterwards, on the 20th day of October, 1880, it being the third day of the October term of said court for 1880, the following fur-
26 ther proceedings were had in said cause, to wit:

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
ALPHONZO L. MARTIN ET AL., DEFENDANTS.

And now on this day, the court having fully heard and considered defendants' motion heretofore filed in this cause, to strike out parts of plaintiffs' petition, sustains the 1st, 2d, 4th, 6th, and 7th counts of said motion, and overrules the 3d, 5th, & 8th counts.

Defendants' 1st bill of exceptions.

And afterwards, on the same day as last aforesaid, the 20th day of October, 1880, and third day of the circuit court, the defendants filed in said cause their 1st bill of exceptions, which are in words and figures following, to wit:

Be it remembered that on this 20th day of October, 1880, the same being the third day of the circuit court of Caldwell County, in the State of Missouri, in a certain cause then depending in said court wherein Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry Rensen, deceased, are plaintiffs, and Alphonzo L. Martin, sheriff of Daviess County, Missouri, and William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association of Gallatin, Daviess County, Missouri, are defendants, the followings were had, to wit: The court took up the defendants' motion to strike out parts of plaintiffs' petition heretofore filed in this cause on the 18th day of October, 1880, which said motion is in words and figures following, to wit:

Which said motion was duly considered by the court, and the third count, and the fifth count, and the eighth count of said motion were overruled by the court, to which ruling of said court in overruling
27 said 3rd, 5th, and 8th counts of said motion the defendant objected, and the court overruled defendants' objection, to which ruling of the court defendants at the time excepted, and asked that his exceptions and objections be made a part of the record in this cause, which is done accordingly.

E. J. BROADDUS, *Judge.* [SEAL.]

Defendants' demurrer.

And afterwards, on the 20th day of October, 1880, it being the third day of the October term of said circuit court, the following further proceedings were had in said cause, to wit:

A. S. WEBB ET AL., PLAINTIFFS,
against
A. L. MARTIN ET AL., DEFENDANTS.

Now on this day come the defendants hereto, by their attorneys, and file demurrer in this cause, which said demurrer is in words and figures following, to wit:

ALBERT S. WEBB, ROBERT L. BELLKNAP, AND William H. Kane, trustees under the will of Henry R. Rensen, deceased, plaintiffs,
against
ALPHONSO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, and William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association of Gallatin, Daviess County, Missouri, defendants.

In the Caldwell circuit court, October term, 1880.

28 Now at this day come the defendants in the above-entitled cause and demur to the plaintiffs' petition herein on the grounds of objection:

1. That said petition does not state facts sufficient to constitute a cause of action.
2. Because the petition does not state facts sufficient to entitle plaintiffs to relief by writ of injunction.
2. Because there is no equity in the petition.

J. A. HOLLIDAY,
Att'y for Defendants.

Order overruling demurrer.

And afterwards, on the first day of March, 1881, it being the second day of the February term of said court for 1881, the following further proceedings were had in said cause, to wit:

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Rensen, deceased, plaintiffs,
against
ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Associate of Gallatin, Missouri, defendants.

Now, on this first day of March, 1881, come the parties to this cause, by their respective attorneys, and the court takes up defendants' demurrer heretofore filed in this cause, and having seen, heard, and fully considered the same, overrules the demurrer.

Answer.

And afterwards, on the first day of March, 1881, it being the
29 second day of the February term of said court, the following further proceedings were had in said cause, to wit:

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
A. L. MARTIN ET AL., DEFENDANTS.

Now on this day come the defendants, by their attorney, and file answer, which said answer is in words and figures following, to wit:

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Rensen, deceased, plaintiffs,
against
ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, William W. Clevenger, sheriff of Caldwell, and the Daviess County Savings Association of Gallatin, Missouri, defendants.

In the circuit court of Caldwell County, February term, 1881.

For answer to plaintiffs' petition in the above-entitled cause the defendants state:

That defendants have no knowledge or information sufficient to form a belief that plaintiffs are trustees under the will of Henry R. Rensen, deceased, duly qualified and acting as such under the laws of the State of New York.

Defendants aver that the plaintiffs nor either of them have legal capacity to sue under the laws of this State.

Defendants deny that the judgments obtained by the Exchange Bank of Breckenridge, Missouri, on the 5th day of July, 1875, against the said Patrick S. Kenney, for the sum of one thousand one hundred and twenty-nine $\frac{95}{100}$ dollars, or any other sum, with ten per cent. interest from
30 date, was on June 30, 1879, a lien prior and superior to the deed of trust to William G. Gillihan and Samuel T. Brossius, for the benefit of the Daviess County Savings Association, as stated in the petition, deny that the judgment obtained on the first day of November, 1875, for seven hundred and seventy-five dollars or any part thereof in favor of Thomas Ryan and against said Patrick S. Kenney, was or is a lien on said lands or any part thereof prior, senior, and superior to the lien of said deed of trust to said William G. Gillihan and Samuel T. Brossius, as alleged in the petition. Defendants deny that on the 30th day of June, 1879, or at any other time, the defendant The Daviess County Savings Association, jointly or severally with the said Patrick S. Kenney, was desirous of preventing a sale of said lands or any part thereof on said judgments and trusts or either of them, and further denies that any judgment and trusts were prior and superior to the deeds of trust then and now held by the said defendant, or that any judgments or deeds of trust on said lands were being pressed for collection, or that said defendant caused or procured said

P. S. Kenney to apply through his agents or otherwise to the plaintiffs or either of them for a loan of ten thousand dollars, or any other sum or amount of money, to be secured by deed of trust on all or any of said lands.

Defendants further deny that plaintiffs at the solicitation of defendants, jointly with said P. S. Kenney or otherwise, agreed to lend said Kenney said ten thousand dollars or any other sum, or that plaintiffs relied on the statements made by said defendants jointly with said P. S. Kenney, or otherwise in making said loan to said Kenney.

Defendants further deny that Daviess County Savings Association, def't, ever made an express agreement, or any other agreement or understanding, with said P. S. Kenney or plaintiffs, or either of them, that
31 all or any of said liens or incumbrances held by said defendants should be removed, released, and satisfied, or that plaintiffs should have as security for said loan of ten thousand dollars a trust-deed on all or any part of said lands, which trust-deeds should be senior, prior, and superior to all of said liens, claimed, owned, and held by said defendants, or any other liens held by defendants.

Defendants deny that the plaintiffs, relying alone or at all on said all leged agreement or statement or representation of defendant The Daviess-County Savings Association made jointly with said Kenney or otherwise, or that in pursuance of the same, did lend to said Kenney said sum of ten thousand dollars or any other sum for the term of five years, or any other time, at the annual rate of eight per cent. interest or any other rate, or that at the instance and request of said defendant and said Patrick S. Kenney, jointly or otherwise, or that in pursuance of said alleged agreement, or any agreement made by said defendant, the same or any part of said ten thousand dollars was paid and applied as follows: Five thousand two hundred dollars in satisfaction of the debt or any part thereof secured by the deed of trust to Thomas Culligan, trustee for James D. Powers; sixteen hundred and eighty-nine $\frac{86}{100}$ dollars or any part thereof in payment and discharge of the three judgments, or either of them hereinbefore mentioned, or that three thousand one hundred and ten $\frac{14}{100}$ dollars or any part thereof was paid to defendant The Daviess County Savings Association, in pursuance of any agreement or understanding whatever made with said defendant or their agents by the plaintiffs or their agents.

Defendants deny that in pursuance of said alleged agreement or any agreement the said defendant The Daviess County Savings Associa-
32 sion, formally or otherwise cancelled and entered satisfaction on the records of all or any of the said deeds of trust to it belonging where the same were recorded on the records of Caldwell County, Missouri, or that said deeds of trust or any or them have ever been cancelled, paid, or satisfied, or that satisfaction was ever entered of record by said defendants of its said deeds of trust, or that the same were ever cancelled or released by said defendant, or that the same were ever paid or satisfied by the plaintiff's or any other person.

Defendants deny that by said alleged transaction or any transaction and agreements that any of the debts secured by said defendants' deeds of trust or any part thereof to said defendants were paid, cancelled, or satisfied, or that they were so to be treated by the defendant The Davies County Savings Association.

Defendants deny that the said Patrick S. Kenney confederated or conspired together with the said Daviess County Savings Association, or that said defendant ever did conspire or confederate with said P. S. Kenney to swindle and defraud plaintiffs, or either of them, or fraudulently to disregard their or its agreements aforesaid, or any agreement, or in the face thereof or upon the fact that plaintiffs fully relied or relied at all on any alleged agreement of said defendant made jointly with said Kenney, or otherwise, or that plaintiffs ever accepted said defendants' alleged statements and promises to endeavor by unfair and dishonest means or otherwise to destroy plaintiffs' said securities or to make the same inferior to said defendants' said deeds of trust aforesaid.

Defendants deny that they now pretend to hold their said deeds of trust as valid securities, but defendants aver that defendant The Daviess County Savings Association holds its said deeds of trust as absolutely valid
33 securities for the indebtedness of said P. S. Kenney to it unaffected by any trust-deed made by said Kenney to plaintiffs.

Defendants deny that plaintiffs have suffered irreparable damage or damage at all by any act or acts of defendants.

Defendants deny that the defendant The Daviess County Savings Association ever authorized Robert L. Tomlin, its cashier, or any other person or persons, to cancel or release its deeds of trust, or either of them, or that said Tomlin ever released or cancelled said defendants' said deeds of trust, or either of them, in pursuance of said agreement, or any agreement, promise, or understanding before referred to, or otherwise.

Defendants deny that any cloud will be cast by the sales referred to upon the plaintiff's title to or interest in said lands or any part thereof, or that a sale under defendants' said trust deeds will cause endless litigation, or any litigation whatever.

Defendants deny that if they are permitted to proceed with said sales that they will cast a cloud upon plaintiffs' title to said lands or any part thereof, or that it will be impossible for plaintiffs' trustee under their trust-deed to sell said lands and realize debts due or to become due to plaintiffs or for plaintiffs, by any other means to protect themselves and secure payment of their debt, or that there will be any great legal wrong or any wrong done to plaintiffs for which they have no adequate remedy at law.

Defendants deny that the Daviess County Savings Association ever enjoined secrecy on a part or any of the trustees in said deeds of trust belonging to said defendant as to the sales or any of them, or that it is fraudulently or wrongfully trying to make said sales or any of them, in which such trustees refused to act, or otherwise, or that it ever requested
34 said trustees or any trustees not to inform plaintiffs of the proceeding of the sale of the land under its deeds of trust, or that it ever had any design or willingness to overreach plaintiffs, or either of them, or defraud them of their rights.

Defendants admit that they never offered to return any money to the plaintiffs, and aver that the said Daviess County Savings Association never received any moneys from plaintiffs, their agent, attorney, and is under no obligation to return plaintiffs any money, and the defendants deny that the failure of said defendant to deliver money to plaintiffs, to which they were not entitled, and which defendant was under no obligation to deliver, was or is a fraud in law or attests any bad faith of the defendant or entitles plaintiff' to any relief.

Defendants deny that the entire capital stock of the Daviess County Savings Association amounts to only five thousand dollars, but avers that the paid-up capital stock of said association is nearly ten thousand dollars.

Defendants aver that they will never redeem under plaintiffs' deed of trust.

Defendants state that the Daviess County Savings Association is solvent and competent to pay all its honest debts without any favors from plaintiffs or invidious and meddlesome allegations by plaintiffs.

Defendants admit that at the time this suit was brough' by plaintiffs that their said deed of trust was not in default, but aver the facts to be that shortly afterwards, to wit, on or about the first day of July, 1880, that said deed of trust became in default by said P. S. Kenney failing to make the payment then due thereon, and that since that time the plaintiffs have had an adequate remedy at law, and could have prosecuted their suit in ejectment against defendants to enforce their rights, if any they have, and defendants deny that plaintiffs cannot protect themselves
35 by action at ejectment or other remedy at law.

Defendants deny that they should be forever enjoined or enjoined at all from selling under each and all of their said deeds of trust or from proceeding further to foreclose the same or any of them, or that a temporary injunction should ever have been issued to restrain the defendants or any of them until the final hearing of this cause or any other time; deny that said trust-deeds were ever cancelled or satisfied or that they should be so declared by the court, or held for nought, or that plaintiffs' trust-deeds should be established as a first lien on all or any of said lands superior, prior, and senior to the claims, rights, interests, of defendants upon all or any of said lands.

Deny that plaintiffs are entitled to any or further relie' or any relief at all, or that plaintiffs have any right, moral, legal, or equitable to the specific performance of any contract, and specially a contract the never made.

Defendants, having fully answered, ask to be discharged, and for judgment for costs and its damages growing out of the injunction, and for proper relief.

JAMES H. B. McFERRAN, AND
J. A. HOLLIDAY,
Attorneys for Defendants.

I, James Henry, president of the Daviess County Savings Association, on behalf of the defendants, after being duly sworn according to law, upon my oath say that I believe that the statements and allegations in the foregoing answer are true as therein stated.

JAMES HENRY.

Subscribed and sworn to before me, this 24th day of February, 1881.

Witness my hand and the seal of the county court of Daviess County affixed thereto.

PINES R. DUNN, [SEAL.]
Clerk Co. Court,
By GEO. TUGGLE, *D. C.*

36 *Plaintiffs' reply.*

And afterwards on the 1st day of March, 1881, it being the second day of the February term of said circuit court for 1880, the following further proceedings were had in said cause, to wit:

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
A. L. MARTIN ET AL., DEFENDANTS.

Now on this day come the plaintiffs herein by their attorney and file reply, which reply is in words and figures following:

In the circuit court of the State of Missouri, in and for Caldwell County.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,
against
ALPHONSO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, and William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, of Gallatin, Missouri, defendants.

Replication.

The plaintiffs for reply to the defendants' answer herein, say:

They deny each and every allegation and statement set forth in the defendants' answer except such statements as admit the allegations of the plaintiffs' petition.

37 Plaintiffs further replying to said answer allege that each and every act and statement of the defendant The Daviess County Savings Association said, done, or performed by them, or so said, done, and performed by them through the said Robert L. Tomlin, who was their cashier and general and authorized agent, was duly authorized by said association, and is binding in each and every particular upon the same.

That said association has ever held out the said Robert L. Tomlin as its general agent fully and generally authorized to do all such acts as are set forth in the petition in its behalf.

And plaintiffs, still further replying to said answer, allege that said Daviess County Savings Association has fully ratified, confirmed, and adopted all the acts of the said Robert L. Tomlin, making them fully and without qualification its own.

That it has received and adopted as its own all the proceeds and benefits arising from said acts, and is fully estopped from denying or gainsaying said acts, or that plaintiffs are entitled to all and singular the relief prayed by them.

That in all that the plaintiffs did in making said loan and applying and advancing the money directed by the said Daviess County Savings Association.

Whereof the plaintiffs resume the prayer of their petition.

STUART BROS.,
GILLIHAN & SHEETS.

STATE OF MISSOURI,
County of Caldwell:

I, Lew E. Darrow, being duly sworn, says I have heard read the foregoing replication and the that the matters and things set forth therein are true as I verily believe.

LEW E. DARROW.

Subscribed and sworn to before me this 1st day of March, 1881.
38 WINFIELD MILLER, *Clerk.*

Demurrer to plaintiffs' reply.

And afterwards on the 1st day of March, 1881, it being the second day of the February term of said circuit court for 1881, the following further proceedings were had in said cause, to wit:

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
A. L. MARTIN ET AL., DEFENDATES.

Now on this day come the defendants by their attorneys and file demurrer, to plaintiffs' reply, which said demurrer is in words and figures, following:

In the Caldwell circuit court February term, 1881.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Rensen, dec'd, plaintiffs,
against
ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, William W. Clevenger, sheriff of Caldwell County, Missouri, and Daviess County Savings Association, of Gallatin, Mo., defendants.

Now come the defendants and demur to all of plaintiffs reply to defendents' answer except the following, to wit:

"The plaintiffs for reply to defendants answer herein, say: They deny each and every allegation and statement set forth in the defendants' answer, except such statements as admit the allegations of plaintiffs' petition"—

For the following grounds of objection:

1st. Because the remainder of said reply sets up new matter in
39 reply to said answer inconsistent with the petition and constituting no defence to any matters contained in defendants' answer in this: The new matter set up enlarges the petition by making additional allegations to the petition, and is therefore inconsistent with it and presents no new defense to any new matter in the answer because said reply charges "that the defendants The Daviess County Savings Association held out Robert L. Tomlin as its cashier and general authorized agent, fully and generally authorized to do all such acts as are set forth in the petition in its behalf, and that said Daviess County Savings Association has fully

ratified, confirmed, and adopted all the acts of the said Robert L. Tomlin, making them fully and without qualification its own, and that it has received and adopted as its own all the proceeds and benefits arising from said acts, and is fully estopped from denying or gainsaying said acts, or that plaintiffs are entitled to all and singular relief prayed for by them, and in all that the plaintiffs did in making said loan and applying and advancing the money was dictated and directed by the said Daviess County Savings Association," when in fact there are no such allegations either in the petition or answer.

JAMES McFERRAN &
J. A. HOLLIDAY,
Att'ys for Defendants.

Petition for removal.

And afterwards on the 1st day of March, 1881, it being the second day of February term of said circuit court for 1881, the following further proceedings were had in said cause, to wit:

ADBERT S. WEBB ET AL., PLAINTIFFS,
vs.
A. L. MARTIN ET AL., DEFENDANTS.

40 Now on this day come the plaintiffs to this cause by their attorneys, and file petition praying the court to make an order removing this action for trial in the circuit court of the United States for the district where the same is now pending, which said petition for removal is in words and figures following, to wit:

In the circuit court of the State of Missouri, in and for Caldwell County.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry Rensen, deceased, plaintiffs,
vs.
ALPHONSO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, William W. Clevenger, sheriff of Caldwell County, Missouri, & the Daviess County Savings Association, of Gallatin, Missouri, defendants.

To the honorable court aforesaid:

Your petitioners, the plaintiffs in the above-entitled action, respectfully state—

That the amount in dispute in this action, exclusive of costs, exceeds the sum of five hundred dollars, the amount claimed involving over ten thousand dollars, as will more fully appear by reference to the original papers filed in this court.

Plaintiffs state that each of them is a non-resident of the State of Missouri, and was at the time of filing their petition herein, and that they are not and were not at commencement of this action citizens of the State of Missouri, but were and each of them citizens of the State of New York.

That the defendants, each and all of them, are citizens and residents of the State of Missouri.

Petitioners further state that they have reason to believe and do
41 believe that, from prejudice and local influence, they will not be able to obtain justice in the courts of this State.

Plaintiffs offer herewith good and sufficient security, viz, his bond with proper sureties thereon, who are good and sufficient, for his entering in the circuit court of the United States copies of all process, pleadings, depositions, testimony, and all papers and proceedings in the case as required by law, and for their appearance in the circuit court of the United States, and then and there entering special bail in this cause if the same was originally required. Said bond is hereto attached, marked "Exhibit A," and made a part hereof.

Plaintiffs therefore pray that this action may be removed for trial into the circuit court of the United States for the district where the same is now pending.

STUART BROTHERS,
Att'ys for Pl'ff.

I, Lew E. Darrow, do solemnly swear that I acted as one of the agents of the plaintiffs in negotiating the loan for which the bond and trust-deed in this action was made; that the firm of Frank & Darrow delivered said bond and trust-deed to the plaintiff for said defendant; that the interest coupon' such as were collected attached to said bond, have been collected through the bank of said Frank & Darrow, and when default was made in the payment of interest said bond was sent to said bank for collection; that I am as well acquainted with the facts stated in this petition as anyone could be, and I further state that they are true, and that *and that* I fully authorized to make this affidavit.

LEW E. DARROW.

STATE OF MISSOURI,
Caldwell County, ss:

42 Subscribed in my presence and sworn to before me this first day of March, 1881, by Lew E. Darrow.

WM. H. B. CARTER, *Co. Cl'k.*

Bond for costs.

EXHIBIT A.

Know all men by these presents that Albert S. Webb, Robert L. Belknap, and William H. Kane, as principals, and Sam. Russell, as surety, are held and firmly bound unto Alphonso L. Martin, sheriff, William W. Clevenger, sheriff, & the Daviess County Savings Association, of Gallatin, Missouri, in the sum of five hundred dollars, lawful money of the United States, well and truly to be paid by us.

The conditions of this obligation are such that if the plaintiffs named herein shall cause to be entered into the circuit court of the United States for the western district of Missouri on or before the first day of the next session thereof copies of all process, pleadings, depositions, testimony,

record, and other papers or proceedings required by law, and shall pay all costs awarded by said court for the wrongful removal of this action, and shall appear in said court and enter special bail, if required by law so to do, in a cause of action wherein Albert S. Webb et al., trustees, are plaintiffs, and Alphonso L. Martin et al. are defendants, and which is now pending on petition for removal in the circuit court of Caldwell County, Missouri, to the circuit court of the United States.

Now, if the said Albert S. Webb, Robert L. Belknap, and William H. Kane well and truly perform all of the aforesaid acts and requirements mentioned herein, then this bond to be null and void; otherwise to remain in full force and effect.

This 1st day of March, 1881.

ALBERT S. WEBB,
ROBERT L. BELKNAP, AND
WM. H. KANE,
Trustees, Principals,
By LEW E. DARROW,
Their Attorney in fact.
SAM. RUSSELL, *Surety.*

43 I, Sam. Russell, the surety herein, do solemnly swear that I am worth more than ten times the amount of the foregoing bond in property subject to execution in the State of Missouri, over and above all my indebtedness.

SAM. RUSSELL.

Subscribed in my presence and sworn to before me by Sam. Russell this 1st day of March, 1881.

WM. W. H. B. CARTER,
County Clerk.

Order removing cause to U. S. Cir. Court.

And afterwards, on the 1st day of March, 1881, it being the second day of the February term for 1881 of said circuit court, the following further proceedings were had in cause, to wit:

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Rensen, deceased, plaintiffs,
against
ALPHONSO L. MARTIN, SHERIFF OF DAVIESS County, Missouri; William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, defendants.

Now, on this day come the parties to this cause, by their respective attorneys, and the court, having seen, heard, and considered plaintiffs' petition heretofore filed in this cause, praying the court to make an order to remove this cause into the circuit court of the United States for the district where the same is now pending, orders that the prayer of said petition for removal be granted, and that this cause be removed to the circuit

court of the United States, and that all the proceedings herein be
44 properly certified to said circuit court, as by law required. And now at this day come the plaintiffs hereto as principal, with Sam. Russell as surety, and file their bond in the sum of five hundred dollars, which said bond is by the court approved.

Certificate to transcript.

STATE OF MISSOURI,
County of Caldwell, ss:

I, Winfield Miller, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing transcript contains a full, true, and perfect copy of all proceedings had in said circuit court of Caldwell County in the above-entitled cause, as the same appear of record and on file in my office, together with the original depositions in said cause.

Witness my hand and the seal of said court. Done at office, in Kingston, this 23rd day of April, A. D. 1881.

WINFIELD MILLER, [SEAL.]
Clerk Circuit Court.

45 And afterwards, to wit, on the 18th day of May, A. D. 1881, during the regular May term of said court for said year the following proceedings are entered upon the rule book, to wit:

A. S. WEBB ET AL., *against* A. L. MARTIN ET AL. } 337.

This day come the parties, by their counsel, the complainants by T. B. Stuart, and the defendants by McFerran & Holliday, and the demurrer to the replication herein coming on for hearing the same is argued and submitted et curia advisare vult.

And afterwards, to wit, on the 19th day of May and during said term the following further proceedings are entered, to wit:

A. S. WEBB ET AL., *against* A. L. MARTIN ET AL. } 337.

The demurrer to the replication herein having been heretofore submitted to the court, now the pr'mcises being duly considered the court doth sustain the same; and upon motion of complainants for leave to file an amendment to their bill the court doth grant the same, and said amendment is therefore filled.

Said amendment to the bill is in words and figures as follows, to wit:

In the circuit court of the United States, in the western division of the western district of Missouri.

ALBERT S. WEBB, ROB'T L. BELKNAP, AND William Kane, trustees under the will of Henry R. Remsen, deceased, plantiffs,
46 *against*
THE DAVIESS COUNTY SAVINGS ASSOCIATION and others, defendants.

Amendment to petition.

To the judges of the circuit court of the United States for the western division of the western district of Missouri:

The petitioners herein having first obtained leave of the court, come now and amend their petition, making the following additional allegations in connection with the facts therein stated.

Petitioners allege that they are each residents of the city of New York and citizens of the State of New York. That the defendants The Daviess County Savings Association and Alphonzo L. Martin are residents of Daviess County, Missouri, and the defendant William W. Clevenger is a resident of Caldwell County, Missouri, and that each of said defendants are citizens of Missouri.

That the amount herein involved far exceeds the sum of five hundred dollars, exclusive of costs.

Petitioners further state that they withdraw the allegation contained in their original petition to the effect that the terms of the Daviess County Savings Association under its deed of trust that were cancelled by it "Were valid and existing liens," at the date of the contracts entered into as set forth in the petition.

That they have been informed since the filling of their petition, and here allege the truth to be, that there were one or two of the said deeds of trust that were never signed or executed by the wife of Patrick Kenney, he being at the time of making them a married man.

That such defect was known to and recognized by the Daviess
47 County Savings Association at the time of the transactions set forth in the petition.

They further allege that in the contracts and transactions set forth in the original petition herein that the Daviess County Savings Association was represented by its manager, general agent, and cashier, R. L. Tomlin, who was fully authorized and empowered to act for it and in its behalf in all that he did, as is more fully set forth in the petition.

That although said association now questions the authority of the said Tomlin to do what he did and bind it by the contracts so made, still petitioners allege that said association has received and appropriated to its own use the fruits of the negotiations of said Tomlin, as fully stated in the petition.

That it received the money as set forth in the petition as being paid for its benefit, and still holds and uses the same, and claims it as its own.

That said association, with full knowledge of all the facts, has fully ratified, approved, and confirmed, all and singular, all that the said Tomlin said and did in its behalf in said negotiations.

Petitioners say that as a further inducement on the part of the bank to apply to and cause the said Kenney to apply to petitioners for the loan and enter into the contracts before set forth, that the depositors of said association were at and about that time withdrawing large sums of money, and it was compelled to have relief by means of ready money. That the said Kenney being unable to pay it, sought by and through the loan so made of petitioners not only to pay off the prior liens upon said land and thus protect its securities, but to provide itself with cash to meet
48 the demands of its depositors, and it did obtain and use said money for such purpose and in carrying on its general business.

Wherefore plaintiffs resume the prayer of their original petition.

STUART BROTHERS,
Attorneys for Plaintiffs.

STATE OF MISSOURI,
Jackson County, ss:

I, Lew E. Darrow, on oath, state that I am fully acquainted with the facts set forth in the foregoing amendment to the petition, and that the matters and things therein set forth are true, as I verily believe.

LEW E. DARROW.

STATE OF MISSOURI,
Jackson County, ss:

Subscribed in my presence and sworn to before me this 19th day of May, 1881, by Lew E. Darrow.

WARREN WATSON,
Com'r U. S. Circuit Court, West. Dist. Mo.

And afterwards, on the 20th day of May, during said term the following further proceedings were entered, to wit.

A. S. WEBB ET AL.
against } 337.
A. L. MARTIN ET AL.

This day come the defendants by T. B. Stuart, their counsel, and file demurrer to amended bill; come also the complainants by their counsel, McFerran & Holliday, and said demurrer is submitted to the court et curia advisare vult.

And said demurrer is in words and figures, as follows, to wit:

In the circuit court of the United States in the western division of
49. the western district of the State of Missouri.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs.
against
THE DAVIESS COUNTY SAVINGS ASSOCIATION and others, defendants.

Now at this day come the defendants in the above-entitled cause and say that there is no matter or thing in said amended petition of plaintiffs good and sufficient in law to call these defendants to account in this honor-

able court for the same; but that there is good cause of demurrer thereunto, and defendants do demur accordingly, and for cause of demurrer say that said petition as amended, in case the same were true, contains no matter of equity whereon this court can ground any decree or give complainant any relief as against these defendants. Wherefore, and for other errors in said petition as amended and appearing on the face thereof, these defendants do demur thereto and pray judgment of the court whether they are compellable to make any answer thereunto otherwise that as aforesaid.

And defendants pray to be dismissed with their costs and charges in this behalf laid out and expended.

JAMES McFERRAN &
J. A. HOLLIDAY,
Att'ys for Defendants.

We certify that, in our opinion, the foregoing demurrer is well founded in point of law.

McFERRAN & HOLLIDAY,
Att'ys for Def'ts.

STATE OF MISSOURI,
County of Jackson, ss:

50 James H. B. McFerran, one of the attorneys for the defendants, and with other counsel having charge of the defence herein, on behalf of the defendants, being duly sworn, upon his oath says the foreging demurrer is not interposed for delay.

JAMES H. B. McFERRAN.

Subscribed an' sworn to before me this 20th day of May, A. D. 1881.

WARREN WATSON,
Com'r U. S. Cir. C't, W. D. Mo.

An admission of defendants in writing is also this day filed as follows, to wit:

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
A. L. MARTIL ET AL., DEFENDANTS.

In the United States district court, western district of Missouri.

Defendants admit that "plaintiffs are trustees under the will of Henry R. Remsen, deceased, duly qualified and acting as such under the laws of the State of New York," as charged in the petition, and further proof of the foregoing allegation in plaintiffs' petition is hereby waived on the trial.

J. A. HOLLIDAY,
Att'y for Defendants.

And afterwards, on the 21st day of May, during said term, the following order was entered, to wit:

A. S. WEBB ET AL.
against
A. L. MARTIN ET AL. } 337.

Upon application of defendants, by their solicitors, leave is
51 granted to them to answer by July rules.

And on said day the following stipulation was filed, to wit:

In the circuit court of the United States in the western division of the western district of the State of Missouri. May term, 1881.

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
THE DAVIESS COUNTY SAVINGS ASSOCIATION et al., defendants.

It is stipulated between the parties in the above-entitled cause that no costs shall be adjudged or taxed under the rules of court at this term of court against either party to this cause on account of demurrer filed by either party being overruled at this term.

That either party may take and file further depositions or interrogatories and cross-interrogatories at any time till the 15th day of August next, and in rebuttal at any time till the 15th day of September next. It shall only be necessary to deliver to any of the attorneys on either side a copy of the notice and interrogatories and cross-interrogatories 20 days before the day fixed in the notice for taking the deposition, which notice and interrogatories shall be annexed to and returned with the deposition, which depositions shall be read in the cause subject only to the objection of relevancy and competency, unless objections as to the form of the interrogatories and answers be made at the taking of the depositions, in which event they can be made on the trial or by motion to strike out or suppress.

The depositions of Darrow and Davis, which are now being taken, shall be subject to no other objections than above provided, except if
52 either of said parties fail to answer fully, or if they answer evasively the cross-interrogatories, defendant retains the right on that ground.

This cause shall stand at issue and for trial at the next term.

The replications to be filed in this case and case No. 336, shall be a general denial, and shall not be sworn to, and case 336 shall also stand continued until next term.

This 20th day of May, 1881.

STUART BROS.,
Atty's for Plaintiff.
HOLLIDAY & McFERRAN,
Atty's for Defendants.

And on the 23rd day of May, during said term, the following replication was filed, to wit:

In the circuit court of the United States in and for the western division of the western district of Missouri.

ALBERT S. WEBB ET AL.
against
THE DAVIESS COUNTY SAVINGS ASSOCIATION et al.

Come now the plaintiffs herein, and for replication to the answer of defendants to the amendment to the petition, say:

They deny each and every allegation contained in said answer.

STUART BROS.,
Att'ys for Plaintiffs.

And on the 8th day of July, 1881, in vacation of said court, the following answer was filed, to wit:

In the United States circuit court for the western division of the western district of Missouri. Of the May term, 1881.

ALBERT S. WEBB, ROBERT L. BELKNAP, and WILLIAM H. KANE, trustees under the will of Henry R. Remsen, deceased, complainants,

vs.

ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, WILLIAM W. CLEVENGER, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, of Gallatin, Daviess County, Missouri, Missouri, defendants. } In chancery.

The answer of Alphonso L. Martin, William W. Clevenger, and the Daviess County Savings Association to the complainants' original and supplemental bill of complaint herein.

These defendants now and at all times hereafter saving and reserving all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said original and supplemental bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say:

That defendant Martin, at the time named, was sheriff of Daviess County, Missouri; that defendant Clevenger was at said time the sheriff of Caldwell County, Missouri, and that the Daviess County Savings Association was a corporation duly organized under the laws of the State of Missouri; and defendants admit that Patrick S. Kenney, of Caldwell County, Missouri, was, on the 30th day of June, 1879, and for a long time before then had been largely indebted to the defendant The Daviess County Savings Association, of Gallatin, Daviess County, Missouri, and that said indebtedness was secured to said Daviess County Savings Association by deeds of trust executed by the said Patrick S. Kenney and Elizabeth, his wife.

54 These defendants, further answering, admit that the said Patrick S. Kenney and Elizabeth, his wife, executed the seven several deeds of trust described in complainants' said bill of complaint, as therein stated, to secure the said indebtedness, and that each and all of said deeds of trust, except the deed of trust dated September 21st, A. D. 1874, were valid and subsisting liens upon the premises therein respectively described, as charged in said original bill of complaint, to secure the indebtedness therein re-

spectively described, and that the Daviess County Savings Association then and there held said indebtedness for the benefit of the said association.

These defendants, answering, say that they admit that said Kenney and his wife made his certain other deeds of trust to one Thomas Culligan for the use and benefit of one James D. Powers, to secure the payment of the sum of $5,000.00 on the SW. fourth of section (3) three, and the east half of the SE. quarter of section four (4), in township 57 N., R. 29, containing 240 acres, and that as to said tract of land the said last-mentioned deed of trust was a prior lien except the lien of the said deed of trust to M. A. Low for the use of Leslie P. Barnum.

These defendants, further answering, charge it to be true that the said deeds of trust held by the said Daviess County Savings Association on the said 30th day of June, 1879, were valid and subsisting liens upon all the lands therein described, to secure the debts therein respectively described and set forth, and that said deeds of trust were prior liens upon lands of sufficient value to secure the payment of the indebtedness therein and thereby secured and held by the Daviess County Savings Association.

The defendants, further answering, say they are informed and believe, and upon such information and belief charge it to be true, that the
55 said judgment in favor of the Exchange Bank of Breckenridge, and the said judgments in favor of Thomas Ryan, mentioned in complainants' said bill of complaint, were not, nor were either of the said judgments prior or superior liens to either of the said deeds of trust so held by the Daviess County Savings Association upon any of the lands therein mentioned.

These defendants, further answering, deny that on the 30th day of June, 1879, or at any other time that the said Daviess County Savings Association and said Kenney were desirous of preventing a sale of any of the lands mentioned in said deeds of trust under said judgments or under said deed of trust to said Culligan for Powers, and defendants deny that said judgments or deed of trust in any manner affected the security of the said Daviess County Savings Association or that said Daviess County Savings Association knew that said judgments and deed of trust were being pressed for collection, or that said association caused said Kenney to apply to complainants through agents or otherwise for a loan of ten thousand dollars to be secured by a deed of trust on all or any of said lands.

These defendants deny that said Daviess County Savings Association ever solicited complainants to loan said Kenney the sum of ten thousand dollars, or any other sum, or that said complainants ever loaned said Kenney ten thousand dollars at the request or solicitation of said association, or that complainants relied upon any statements or representations or promises made by said association in making any loan to said Kenney.

These defendants deny that said complainants loaned ten thousand dollars to said Kenney upon the express or any agreement or understanding made or had by and between them and said association and said Kenney that all other, or any liens or encumbrances should be
56 released or satisfied, or that complainants should have as security for said loan a trust deed on any or all of said lands which should be prior, senior, or superior to all or any of said liens of said Daviess County Savings Association, or that the complainants loaning said money

to said Kenney relied upon any such agreement, statement, or representation made by said association, or that said savings association, or any one for said association, had any right, power, or authority to make any such agreement, statement, or representations.

These defendants deny that at the time said pretended satisfaction of said deeds of trust was entered of record that the depositors of said association were withdrawing large sums of money from said association, or that it needed or was compelled to have relief, or that said sum of $3,000 was needed to pay depositors, but on the contrary the said association was amply able to provide for all the depositors.

These defendants admit that said complainants did loan to said Kenney the sum of ten thousand dollars, and that said Kenney executed a deed of trust to secure the same, but these defendants deny that any part of the money so borrowed by the said Kenney was paid at the instance or request of said association on the said Powers deed of trust, or upon the said judgments, or to the said association, and these defendants expressly deny that said Daviess County Savings Association agreed to or did cancel or enter satisfaction of record of all or any of said deeds of trust, or that said deeds of trust, or any of them, were canceled or entered of record as satisfied by any one having any authority so to do, or that the debts secured by said deeds of trust or any part thereof were in any manner paid or satisfied.

These defendants deny that the debts secured by said deeds of
57 trust were in any manner paid to said association, or to anyone for its use and benefit.

These defendants, further answering, admit it to be true that said Kenney executed to complainants his certain deed of trust to secure a loan of ten thousand dollars upon the premises therein described, but these defendants charge it to be true that said complainants, at the time they proposed to loan said Kenney ten thousand dollars, well knew that said Kenney was indebted to the Daviess County Savings Association in a large sum of money, to wit, in the sum of about $36,000. And that said indebtedness was amply secured by a first lien on over 1,000 acres of valuable improved lands, and that the Daviess County Saving Association was satisfied with said security, and that complainants knew that said proposed loan to Kenney was not to be applied to the payment of said indebtedness and the discharge of the said liens. And defendants, further answering, charge it to be true that complainants procured said Tomlin to enter upon the respective records of said deeds of trust a pretended satisfaction thereof; that said pretended satisfaction was false and fraudulent, and at the time the same was so entered nothing whatever had been paid upon the said indebtedness of said Kenney to said association.

These defendants admit that said Tomlin was cashier of said Daviess County Savings Association, but they expressly deny that he was the manager or managing officer of said association, or that he held any other position in respect to the said association that that of cashier as aforesaid, and they deny that he had any authority in law or fact to enter of record the said pretended satisfaction of said deeds of trust or to discharge said liens.

These defendants, further answering, say that while it is true,
58 as they are now informed and believe, that said Kenney paid to said Tomlin, after said pretended satisfaction was entered of record,

about the sum of three thousand dollars upon said Kenney's indebtedness to said association, and that said Tomlin placed the money in the bank of said association as a part of its funds, yet these defendants deny that any entry was made by said Tomlin showing any of the said transactions between complainants Tomlin and Kenney or said pretended satisfaction of said deeds of trust, but on the contrary defendants charge it to be true that all knowledge of said transactions between complainant Tomlin and Kenney was withheld from the officers of said association, and that it did not become known to them until steps were about to be instituted to sell upon said deeds of trust held by said association; that the officials of said association, except said Tomlin, were ignorant of said transactions and of the manner in which said money had been paid on Kenney's indebtedness, and that all and singular the acts and doings of said Tomlin in the premises were, when they so became known to the officers of said association, at once repudiated, and the defendants Martin and Clevenger, as such sheriffs as aforesaid, were called upon by said association to sell under deeds of trust, and that said Martin and Clevenger did proceed to advertise and sell when they were enjoined from so doing by these proceedings.

These defendants deny that the said association has in any manner ratified the acts and doings of said Tomlin in the said transactions between complainants and said Kenney, and in said pretended satisfaction of said deeds of trust, or that they have knowingly used and enjoyed the fruits of the same, but on the contrary said association asks that said pretended cancellation be set aside and for nought held, and that complainants' said lien be postponed to the lien of said association, [and to that end said
59 association is ready and willing to pay over to complainants or to such other party as may be entitled thereto under the direction of the court, the said sum of three thousand dollars.]

All which matters and things defendants are ready and willing to maintain and prove as this honorable court may direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and for all proper relief.

THE DAVIESS COUNTY SAVINGS ASSOCIATION,
By JAMES HEMRY,
President of said Association.

A. L. MARTIN,
W. W. CLEVENGER,
By HOLLIDAY, McFERRAN & WATERS,
Their Solicitors.

STATE OF MISSOURI,
County of Daviess, ss:

I, James Hemry, president of the Daviess County Savings Association, do swear on my oath that the matters and things set forth in the foregoing answer are, to the best of my knowledge and belief, true, as therein stated.

[SEAL.] JAMES HEMRY,
On behalf of Defendants.

The foregoing affidavit was this day subscribed and sworn to before me, the undersigned clerk of the county court within and for the county

and State aforesaid, by James Henry. In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at office in Gallatin, Missouri, this 7th day of June, A. D. 1881.

[SEAL.] PINES R. DUNN,
Clerk Co. Court,
By GEORGE TUGGLE, *D. C.*

60 And afterwards on October 10th, 1881, the following appears upon the order-book, to wit:

A. S. WEBB, ET AL. *against* A. L. MARTIN, ET AL. } 337.

This day there is filed herein a stipulation of counsel, allowing defendants to strike out parts of answer filed July 8th, 1881.

Said stipulation is in words and figures as follows, to wit:

In the United States circuit court, western division western dist. Missouri.
Oct. term, 1881.

ALBERT S. WEBB, ET AL. *vs.* ALPHONSO L. MARTIN, ET AL. } In chancery.

It is hereby agreed that so much of defendants' answer as is enclosed in brackets, and embracing lines numbered 4, 5, 6, & 7, and a part of 3, which reads as follows: "And to that end said association is ready and willing to pay over to complainants, or to such other party as may be entitled thereto under the directions of this court, the said sum of three thousand dollars," may be stricken out of said answer.

This is done upon request of defendants, to which plaintiff assents.

WATERS, MCFERRAN AND HOLLIDAY,
For Def'ts.
STUART BROS., *Att'ys for Complainants.*

And afterwards on the 11th day of October, 1881, in vacation of said court, the following entry appears of record, to wit:

61 A. S. WEBB ET AL. *against* THE DAVIESS COUNTY SAVINGS ASSOCIATION et al. } 337.

This day come the parties and file stipulations as to certain facts and as to the hearing, and also come complainants and file motion to suppress depositions and waiver of answer under oath.

Said stipulation is as follows, to wit:

ALBERT S. WEBB ET AL. *v.* ALPHONSO MARTIN ET AL. } No. 337.

In circuit court of U. S. at Kansas City.

It is hereby agreed that the defendant, The Daviess County Savings As-

sociation, is now and was at the time of the transactions named in the petition, a corporation duly organized under the laws of the State of Missouri for banking purposes.

STUART BROS., *Att'ys for Pl'ffs.*
HODLIDAY, McFERRAN & WATERS,
Att'ys for Def'ts.

Said waiver of answer under oath is as follows, to wit:

In the circuit court of the United States at Kansas City.

ALBERT S. WEBB ET AL.)
vs.)
ALPHONSO L. MARTIN ET AL.)

Comes now the complainants and waive the verifying by defendants, or either of them, of answer filed herein, and ask that such answer be now filed under oath.

STUART BROS.,
Att'ys for Complainants.

And said motion to suppress depositions is as follows, to wit:

62 In the circuit court of U. S. at Kansas City.

ALBERT S. WEBB ET AL.)
vs.)
ALPHONSO L. MARTIN ET AL.)

Come now the plaintiffs and move the court to suppress the following portions of the depositions hereinafter referred to, for the reasons herein stated:

I. The following portions of deposition of James H. B. McFerran:

1st. The last 3 lines of ans. No. 3, where he states that he was and is general manager; and all of answer No. 4, where he states that he was such manager with consent and acquiescence, &c., &c.

Also the statement of the same fact, commencing in line No. 10 of answer 5, and ending with the word "year," in line No. 16.

Also commencing with the word "subject," in line 11 of answer No. 7, and ending with said answer.

Also each and every part and portion, sentence, and word of answer to int. 12.

Each and every word of the matters above set forth are objected to—

63 1st. As irrrlevant.

2. As incompetent.

3. As stating conclusions of law and fact, and not facts themselves.

4th. The instructions set forth are not claimed to have been given by the incorporation, but by McFerran himself.

5th. If the act of the incorporation the record must be accounted for, and the incorporation could not give such authority to witness, the same being contrary to statute, and direct violation of law.

(See statutes of '79, sec. 906.)

II. And plaintiffs further move the court to suppress each and ever' word and sentence of the following matter in the deposition of R. L. Tomlin.

1st. Commencing with the word "but" in the 3' line of answer 6, and ending with said answer.

Also, 2d. Commencing with the word, "and" in line No. 11 of answer 12, and ending with the word "institution" in line 15 of said answer.

Also, 3. Commencing with words "my intention" in line 6, and ending with words "through them" in line 24. All found in next to the last page of said deposition.

Each of the objections are here made as are made to the depositions of James McFerran in division I hereof, and each of said objections are here urged to the deposition of said Tomlin, with the same force and effect as if here copied at length.

III. And plaintoffs further move the court to suppress each and every word and sentence of the following matter in the deposition of James Hemry.

1st. Commencing with the word "McFerran" in line 5, of page
64 3, and ending with word "Bank" in 8' line of said page.

Also, 2d. The last question and answer in chief of said deposition.

Also, 3d. Commencing with the words "I knew" in line 12, page 7, and ending with the answer.

Each of the objections are here made as are made to the deposition of James McFerran in division I hereof.

And each of said objections are here urged to the deposition of said Hemry, with the same force and effect as if here copied at length.

STUART BROS.,
Solicitors for Complainants.

65 And on said day the following stipulation of parties was also filed, to wit:

In the circuit court of the U. S.

ALBERT S. WEBB ET AL. vs. ALPHONSO L. MARTIN ET AL. } 337.

and

D. A. GLENN ET AL. vs. ALBERT S. WEBB ET AL. } 336.

It is hereby agreed by and between the parties hereto as follows:

1st. That both of said causes (the court consenting) are hereby consolidated, and shall be tried and submitted together, and joint decree or several decrees entered, as the court may determine.

2. Subject to the approval of the court, these causes are set trial on the 1st day of November, 1881, and shall not be called for any purpose prior to said date.

Upon being called, objections to depositions and abstracts may be presented or made on the trial.

STUART BROS.,
For Webb et al.
HOLLIDAY & McFERRAN,
For Martin & Glenn et al. and Daviess Co. Sav. A'a'a'n.

And afterwards, on the 17th day of October, 1881, during the regular October term of said court the following entry appears of record, to wit:

ALBERT S. WEBB ET AL.
against } 337.
A. L. MARTIN ET AL.

By consent of parties, defendant files his amended answer to the bill herein.

Said amended answer is as follows, to wit:

66 In the United States circuit court for the western division of the western district of Missouri, of October term, A. D. 1881.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, complainants,
vs.
ALPHONSO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, of Gallatin, Daviess County, Missouri, defendants. } In chancery.

The amended answer of Alphonso L. Martin, William W. Clevenger, and the Daviess County Savings Association to the complainants' original and supplemental bills of complaint.

These defendants, now and all times hereafter, saving and reserving all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainants' said original and supplemental bills of complaint contained, for answer thereto, or so much and such parts thereof as the defendants are advised is or are matarial or necessary for them to make answer unto, these defendants, answering, say: That defendant Martin at the time named was sheriff of Daviess County, Missouri; that defendant Clevenger was at said time sheriff of Caldwell County, Missouri; and that the Daviess County Savings Association was and is a corporation duly organized under the laws of the State of Missouri; and defendants admit that Pat-
67 rick S. Kinney, of Caldwell County, Missouri, was on the 30th day of June, 1879, and for a long time before that had been largely indebted to the defendant The Daviess County Savings Association; that said indebtedness was secured to the Daviess County Savings Association by deeds of trust executed by said Patrick S. Kenney and Elizabeth, his wife.

These defendants, further answering, admit that the said Patrick S. Kenney and Elizabeth, his wife, executed the seven several deeds of trust described in complainants' bill of complaint, as therein stated, to secure the said indebtedness, and that each and all of said deeds of trust, except the deed of trust dated September 21st, 1874, were valid and subsisting liens upon the premises therein respectively described, as charged in said original bill of complaint, to secure the indebtedness therein respectively described, and that the Daviess County Savings Association then and there held said indebtedness for the benefit of said association.

These defendants, further answering, say that they admit that the deed of trust executed by said Patrick S. Kinney an' wife to M. A. Low for the use of Leslie P. Barnum was senior, prior, and superior to a certain other deed of trust made by said Kinney and wife to one Thomas Culligan the use and benefit of James D. Powers, to secure the payment of five thousand dollars on the south half of section three (3) and the east half of the southeast qr. of section four (4), in township 57, range (29) twenty-nine.

These defendants, further answering, charge it to be true that said deeds of trust held by the Daviess County Savings Association on the 30th day of June, 1879, were valid and subsisting liens upon all the lands therein described to secure the debts therein respectively described and set
68 forth, and that said deeds of trust were prior liens upon lands of sufficient value to secure the payment of the indebtedness therein and thereby secured and held by the Daviess County Savings Association.

These defendants, further answering, say they are informed and believe, and upon such information charge it to be true, that the said judgments in favor of the Exchange Bank of Breckenridge, Missouri, and the said judgment in favor of Thomas Ryan, mentioned in complainants' bill of complaint, were not nor were either of the said judgments prior or superior liens to either of the said deeds of trust held by the Daviess County Savings Association on any of the lands therein mentioned.

These defendants, further answering, deny that on the 30th day of June, 1879, or at any other time, that the said Daviess County Savings Association and the said Kenney were desirous of preventing a sale of any of the lands mentioned in said deeds of trust under said judgments or under said deed of trust to said Culligan for the use of said Powers, and defendants deny that said judgments and said deed of trust in any manner affected the security of the said Daviess County Savings Association, or that said Daviess County Savings Association knew that said judgments and deed of trust were being pressed for collection, or that said association caused said Kinney to apply to complaplainants through agents or otherwise for a loan of ten thousand dollars, or any other sum or amount, to be secured by a deed of trust on all or any of said lands.

These defendants deny that said Daviess County Savings Association ever solicited complainants to loan said Kenney the sum of ten thousand dollars at the request or solicitation of said association, or that complainants relied upon any statements, representations, or promises made by said association in making any loan to said Kenney.

69 These defendants deny that said complainants loaned ten thousand dollars to said Kenney upon the express or any agreement or understanding, made or had by and between them and said association and

said Kinney, that all other or any liens and incumbrances should be released or satisfied, or that complainants should have as security for said loan a trust-deed on any or all of said lands, which should be prior, senior, or superior to all or any of said liens of said Daviess County Savings Association, or that complainants in loaning said money to said Kinney relied upon any such agreement, statement, or representation made by said association, or that said savings association or any one for said association had any right, power, or authority to make any such agreement, statement, or representation.

These defendants deny that at the time said pretended satisfaction of said deeds of trust was entered of record that the depositors of said association were withdrawing large sums of money from said association, or that it needed or was compelled to have relief, or that said sum of three thousand dollars was needed to pay depositors, but on the contrary said association was amply able to provide for all its depositors.

These defendants admit that said complainants did loan to said Kenney the sum of ten thousand dollars, and that said Kenney executed a deed of trust to secure the same, but these defendants deny that any part of the money so borrowed by the said Kinney was paid at the instance or request of said association on the said Powers' deed of trust or upon the said judgments or to the said association, and these defendants expressly deny that said Daviess County Savings Association agreed to or did cancel or
70 enter satisfaction of record of all or any of said deeds of trust, or that said deeds of trust, or any of them, were cancelled or entered of record as satisfied by any one having any authority so to do, or that the debts secured by said deeds of trust, or any part thereof, were in any manner paid or satisfied.

These defendants deny that the debts secured by said deeds of trust were in any manner paid to said association, or to any one for its use and benefit, either in money or by and through any contract of satisfaction or otherwise.

These defendants, further answering, admit it to be true that said Kenney executed to complainants his certain deed of trust to secure a loan of ten thousand dollars upon the premises therein described, but these defendants charge it to be true that said complainants at the time they proposed to loan said Kinney ten thousand dollars well knew that said Kinney was indebted to the Daviess County Savings Association in a large sum of money, to wit, in the sum of about $36,680.30 dollars, and that said indebtedness was not more than secured by a lien on about 1,240 acres of improved lands, and that complainants knew that the said proposed loan to Kenney was not to be applied to the payment of said indebtedness and the discharge of said liens; and defendants, further answering, charge it to be true that complainants procured said Tomlin to enter upon the respective records of said deeds of trust a pretended satisfaction thereof; that said pretended satisfaction was false and fraudulent, and at the time the same was so entered nothing had been paid upon the said indebtedness of the said Kinney to the said association.

These defendants admit that said Tomlin was cashier of the Daviess County Savings Association, but they expressly deny that he was
71 the manager or managing officer of said association, or that he held any other position in respect to said association than that of cashier

as aforesaid, and they deny that he had any authority in law or fact to enter of record the said pretended satisfaction of said deeds of trust or to discharge said liens.

These defendants, further answering, say, that while it is true, as they are now informed and believe, that said Kinney paid to said Tomlin, after said pretended satisfaction was entered of record about the sum of three thousand dollars upon said Kinney's indebtedness to said association, and that said Tomlin placed the money in the bank of said association as a part of its funds, yet defendants charge it to be true that all knowledge of said transaction between complainants, said Tomlin and Kinney, was withheld from the officers of said association, and it did not become known to them until at the time steps were taken to sell upon said deeds of trust by said association.

That the officials of said association, except said Tomlin, were ignorant of said transaction and of the manner in which said money had been paid on Kenney's indebtedness, and that all and singular the acts and doings of said Tomlin in the premises were, when they so became known to the officers of the association, at once repudiated, and the defendants, Martin and Clevenger, as such sheriffs as aforesaid, were called upon by said association to sell under the deeds of trust, and that said Martin and Clevenger did proceed to advertise and sell, when they were enjoined from so doing by these proceedings.

These defendants deny that the said association has in any manner ratified, confirmed, or acquiesced in the said acts and doings of said Tomlin in the said transactions between said complainants and said Kinney, and in said pretended satisfaction of said deeds of trust.

72 Defendants, further answering, charge that said pretended contract and transaction sought to be enforced by complainants in this cause, was not made or entered into by said Tomlin in the usual course of business of said association, and that the same was not the business of said association or for its benefit, and was without consideration, passing from said complainants, said Tomlin and Kenney, to the defendants therefor.

Defendants, further answering, charge that the said contract and transaction sought to be enforced by complainants involved the exercise of judgment and discretion, and in its effects was vital to the well-being and existence of said association.

That said authority could not be delegated by the directors of said association, and said contract could only be made in the behalf of said association by the directors thereof.

All which matters and things defendants are ready and willing to maintain and prove as this honorable court may direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and for all proper relief.

[SEAL.] THE DAVIESS COUNTY SAVING ASSOCIATION,
By JAMES HEMRY, *Its President.*
A. L. MARTIN,
W. W. CLEVENGER,
By McFERRAN, WATERS & HOLLIDAY,
Their Solicitors.

STATE OF MISSOURI,
County of Daviess, set:

On this day of October, 1881, before me personally appeared James Henry, whose name is subscribed to the foregoing answer, and made
73 oath that he has heard read the said answer and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on information and belief, & that as to those matters he believes it to be true.

In testimony whereof I, Pines R. Dunn, clerk of the county court, have hereunto set my hand and affixed the seal of said court. Done at office, in the city of Gallatin, this 13th day of October, A. D. 1881.

PINES R. DUNN,
Clerk Co. Court,
By GEORGE TUGGLE, *Dep. Clk.*

And afterwards, on the 21st day of October, 1881, the following reply to amended answer was filed, to wit:

In the circuit court of the United States within and for the western division of the western district of Missouri.

ALBERT S. WEBB, ROBERT L. BELKNAP, & William H. Kane, trustees under the will of Henry Remsen, deceased,
against
ALPHONSO L. MARTIN, WILLIAM W. CLEVENGER, and The Daviess County Savings Association, of Gallatin, Missouri.
} No. 337.

Replication of the complainants herein to all answers and amended answers on file of the defendants aforesaid.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the mani-
74 fold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereto, say that they do and will aver, maintain, and prove their said bill and its amendments to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without that, that any other matter 'r thing in the said answer contained material*ly* or effectual*ly* in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by their said bill they have already prayed.

STUART BROS.,
Solicitors for Repliants.

And afterwards, on the 2nd day of November, during said term, the following further proceedings were entered, to wit:

D. A. GLENN ET AL.
against } 336.
A. S. WEBB ET AL.

and

A. S. WEBB ET AL.
against } 337.
A. L. MARTIN ET AL.

This day come the parties by their respective solicitors, and this cause being regularly called for trial upon the merits, the hearing is proceeded with; the said causes being by mutual consent consolidated for hearing and decree.

Said cause so consolidated herewith was commenced by the filing of a transcript which is in words and figures as follows, to wit:

75 STATE OF MISSOURI,
County of Caldwell, ss:

Pleas before the circuit court of Caldwell County, at a term begun and held in the town of Kingston, county and State aforesaid, on the 28th day of February, 1881, before the honorable James M. Davis, judge of the seventeenth judicial circuit of the State of Missouri.

Notice for injunction.

Be it remembered that on the 1st day of March, 1881, it being the second day of the February term of said Caldwell circuit court, the following proceedings were had, to wit:

DAVID A. GLENN, ACTING SHERIFF OF CALDwell County, Missouri, George T. Crozier, acting sheriff of Daviess County, Missouri, and The Daviess County Savings Association, of Gallatin, Missouri, plaintiffs,
against
ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow, as trustee, and George W. Frank & Darrow, and David W. McNair, trustees, defendants.

Now, on this day come the plaintiffs herein, by their attorneys, and file notice heretofore given for an injunction, and also file petition praying the court to grant them a temporary writ of injunction in this cause.

Which said notice and petition are in words and figures following, to wit:

To Albert S. Webb, Robert L. Belknap, and William H. Kane,
76 trustees under the will of Henry R. Remsen, dec'd, and Lew E. Darrow, as trustee, and George W. Frank & Darrow, & David W. McNair, as trustee:

Please take notice that the undersigned, David A. Glenn, acting sheriff of Caldwell County, Missouri, and George T. Crozier, acting sheriff of Daviess County, Missouri, and the Daviess County Savings Association, of Gallatin, Missouri, will apply to the honorable circuit court of Caldwell County, Missouri, on the first day of March, 1881, the same being the second day of the next regular term of said court, to be begun and held at Kingston, in Caldwell County, Missouri, on Monday, the 28th day of February, 1881, for a temporary injunction restraining you, the said Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, dec'd, and you, the said Lew E. Darrow, trustee, or either of you, from foreclosing or further attempting to foreclose, by suit or otherwise, a certain deed of trust dated the first day of July, 1879, and executed on the 6th day of August, 1879, by Patrick S. Kinney and Elizabeth Kinney, his wife, to the said Lew E. Darrow, in trust, to secure a debt therein described due to the said Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, and from selling the property therein described to pay said debt, and also restraining you, the said George W. Frank and Darrow, and David W. McNair, or either of you, from foreclosing or further attempting to foreclose by suit or otherwise a certain other deed of trust dated on the first day of July, 1879, and executed on the 6th day of August, 1879, by said Patrick S. Kenney and Elizabeth Kenney, his wife, to said David W. McNair, in trust, to secure a debt therein described due to said George W. Frank & Darrow, and from selling the property therein described
77 to pay said debt, and we will apply to said court for such other and further orders as may be proper in the premises.

DAVID A. GLENN,
Acting Sheriff of Caldwell County, Mo.
GEORGE T. CROZIER,
Acting Sheriff of Daviess County, Missouri, &
THE DAVIESS COUNTY
SAVINGS ASSOCIATION,
By J. A. HOLLIDAY, *Att'y.*

Service of the above notice is hereby acknowledged, and all exceptions as to time and place of service waived this 7th day of February, 1881.

ALBERT S. WEBB,
ROB'T L. BELKNAP,
WILLIAM H. KANE,
Trustees &c., &c.
LEW E. DARROW, *Trustee,*
GEORGE W. FRANK AND DARROW,
DAVID W. McNAIR, *Trustee',*
By STUART BRO'S,
Their Attorneys.

Petition.

DAVID A. GLENN, ACTING SHERIFF OF CALDWELL County, Missouri, George T. Crozier, acting sheriff of Daviess County, Missouri, and the Daviess County Savings Association, of Gallatin, Missouri, plaintiffs,

against

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, dec'd, and Lew E. Darrow as trustees, and George W. Frank and Darrow, and David W. McNair, as trustee, defendants.

In the Caldwell circuit court. February term, 1881.

Plaintiffs state that the plaintiff, the Daviess County Savings Association, is a corporation duly incorporated, and doing a general banking business at the city of Gallatin, Missouri, under an act of the general assembly of the State of Missouri, approved February 15th, 1864, entitled
78 "An act to organize savings associations and facilitate exchanges."

That plaintiff David A. Glenn is acting sheriff of Caldwell County, Missouri, and plaintiff George T. Crozier is acting sheriff of Daviess County, Missouri, and by virtue of the provisions of the deeds said sheriffs are trustees under certain deeds of trust executed by Patrick S. Kinney and wife upon the real estate hereinafter described, which are owned by the Daviess County Savings Association, and held by it to secure the payment of certain monies therein specified, and as such trustees are the owners of the legal title to said real estate. That the Daviess County Savings Association is the cestui que trust in said deeds of trust, and as such is the owner of an estate of inheritance in said lands. That by virtue of said deeds of trust, plaintiffs are the owners of an older and better title to said lands than any title owned or claimed therein by the defendants or either of them. That the debts secured to plaintiff by said deeds of trust are in excess of the value of said lands. That in consequence of default in payment of said debts now due to plaintiffs, the plaintiffs the Daviess County Savings Association is now in the lawful possession of said lands, claiming an estate of fre'hold therein. That said lands are situated in the county of Caldwell and State of Missouri, and are known and described as follows, to wit: The south half of section No. three (3); the south half of section No. four (4); the northeast quarter of the northeast quarter, and the west half of the northeast quarter, and the east half of the northwest quarter, and the northwest quarter of the southeast quarter of section No. nine (9), and the N. $\frac{1}{4}$ & the SE. $\frac{1}{4}$ of the NE. $\frac{1}{2}$ of section No. ten (10), all in township No. fifty-seven (57), range No. twenty-nine (29), and containing in all 1,080 acres of land. Plaintiffs aver that they are credibly informed and believe that the defendants and
79 each of them make some claim to the aforesaid lands adverse to the estate of the plaintiffs therein, and that said defendants and each of them are non-residents of the State of Missouri. Plaintiffs aver

that the defendant Lew E. Darrow is the trustee and defendants Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, are the cestui que trusts in a certain deed of trust on said lands executed to them by said Patrick S. Kenney and wife, which is owned and held by them to secure to them the payment of certain monies therein specified under which they claim to be the owners of an older and better title to said real estate than the title owned therein by the plaintiffs. That the conditions of said defendants' said deed of trust have been broken, and the said Lew E. Darrow, as trustee, has the right to sue plaintiffs at law in ejectment. Plaintiffs aver that the defendant David W. McNair is the trustee, and defendants George W. Frank and Darrow are the cestui que trusts in a certain other deed of trust on said lands executed to them by the said Patrick S. Kinney and wife, second to the deed of trust last aforesaid, and owned and held by them to secure to them the payment of certain monies therein specified, and under which they claim to be the owner of an older and better title to said lands than the title owned therein by the plaintiffs. That the conditions of said defendants' said deeds of trust have also been broken, and the said David W. McNair, as trustee, has the right to sue plaintiffs at law in ejectment.

Plaintiffs further state that on the day of May, 1880, they advertised said lands for sale under the provisions of their said deeds of trust in order to realize their debts due them and secured thereby, and on the 17th day of June, and before a sale could be had, the defendants,

80 Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, instituted a suit against the plaintiffs in this court, and procured a temporary injunction from this court against the plaintiffs, restraining the plaintiff" from selling said real estate or any part thereof under their said deeds of trust, which said writ of injunction is now in full force, and said suit is still undetermined. That pending said injunction, to wit, on the 15th day of November, 1880, the defendants Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, dec'd, instituted a suit in this court to foreclose their said deed of trust on said real estate, asking for judgment, in addition to the amount of their debt and interest, for an unreasonable attorney's fee, to wit, in the sum of seven hundred and fifty dollars and costs, to be levied of said real estate, and that on the same day the said George W. Frank and Darrow, def'ts, also instituted suit in this court to foreclose their said deed of trust on said lands, which is second to the deed of trust of the other defendants, also asking for an unreasonable attorney's fee, being the sum of one hundred and fifty dollars in addition to the amount of their debt and interest together with the costs to be levied of said lands. Plaintiffs charge that said suits to foreclose are unnecessary, vexatious, and excessive, and subject said lands to the payment of heavy costs, including attorney's fees, and if permitted to proceed will inflict irreparable loss and injury upon plaintiffs. That said Patrick S. Kinney and wife are insolvent, and plaintiffs' only security for their debts aforesaid is the deed of trust aforesaid on said lands. That upon a trial of title to said lands between plaintiffs and defendants, if defendants are adjudged to have the better title, even in that event the

81 plaintiffs, being in possession after default, would have the right to

redeem from defendants said deeds of trust without being burdened with unreasonable attorneys' fees and vexatious costs, claimed and growing out of the said suits of foreclosure, and which would consume and waste plaintiffs' said security, and inflict irreparable injury upon plaintiffs' rights and interests through a multiplicity of suits. That if defendants are permitted to prosecute said suits of foreclosure to final judgment, and sell said land thereunder in addition to the injury aforesaid, it would tend to render ineffectual any final judgment that may hereafter be rendered for plaintiffs in a suit to try the title to said lands between plaintiffs and defendants by drawing a hurtful cloud over the plaintiffs' title thereto, and by preventing the same from bringing their value at a sale under plaintiffs' deeds of trust, whether sold thereunder as first or second liens to the defendants' deeds of trust. That if defendants are permitted to prosecute said suits to final judgment and sell said lands thereunder while plaintiffs are restrained from selling said lands, it would give defendants an undue, unequal, & inequitable advantage over plaintiffs in the matter of collecting their debts secured by said deeds of trust on said real estate.

Plaintiffs further charge that said suits for injunction and to foreclose said deeds of trust were not brought by defendants to try the question of title to said real estate, or any part thereof, between plaintiffs and defendants, or any of them, and are insufficient and incompetent for that purpose; that plaintiffs' rights to said real estate cannot be protected or enforced in said suits, or by a defence therein, in the ordinary course of proceedings at law, except by oppressive, numerous, and vexatious suits; that
82 there is one common right in dispute between plaintiffs and defendants to the land hereinbefore described, and that the plaintiffs being in the possession of the same, cannot assert their right thereto except by oppressive and vexatious litigation, and by being harassed with a multiplicity of suits, which are all properly determinable in one action to try the title of said lands between plaintiffs and defendants at law, and in which the question of title can be finally determined in one action: Wherefore plaintiffs pray the court that the defendants, and each of them, be summoned to come before this court on the first day of the next regular term thereof, and show cause, if any they have, why they and each of them should not bring an action against plaintiffs to try the alleged title, if any, which they claim to have in and to said real estate, or any part thereof, and which is adverse to the title of plaintiffs therein.

Plaintiffs further pray the court to make an order of record that a temporary writ of injunction issue out of this court, restraining defendants and each of them from further prosecuting their respective suits to foreclosure, their respective deeds of trust aforesaid, and from selling said lands under their said deeds of trust by any other proceeding provided for in the terms of said deeds of trust, and for such other and further relief in the premises as the nature of the case shall require and as to the court shall seem proper.

JAMES H. B. McFERRAN &
J. A. HOLLIDAY,
Att'ys for Plaintiffs.

I, James Hemry, president of the Daviess County Savings Association, on behalf of plaintiffs, after being duly sworn according to law, upon my oath say that I believe that the statements and allegations in the foregoing petition are true as therein stated.

83 JAMES HEMRY.

Subscribed and sworn to before me this 24th day of February, 1881.

Witness my hand and the seal of the county court of Daviess County affixed thereto.

[SEAL.] PINES R. DUNN, *Clerk Co. Court*,
By GEORGE TUGGLE, *D. C.*

Order for injunction and bond.

And afterwards, on the 2nd day of March, 1881, it being the third day of the February term for 1881 of said circuit, the following further proceedings were had in said cause, to wit:

DAVID A. GLENN, ACTING SHERIFF OF CALDWELL County, Missouri, George T. Crozier, acting sheriff of Daviess County, Missouri, and The Daviess County Savings Association, of Gallatin, Missouri, plaintiffs,
against
ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, Lew E. Darrow, as trustee, and George W. Frank and Darrow, and David W. McNair, as trustee, defendants.

Now, on this day, come all the parties to this action, by their respective attorneys, and the court having seen, heard, and fully considered plaintiffs' petition heretofore filed in this cause, praying that a temporary writ of injunction issue out of this court restraining said defendants herein

84 from performing certain acts fully set forth in plaintiffs' petition, it is ordered by the court that the prayer of plaintiffs' petition be granted, and that the defendants herein be enjoined and restrained from further prosecuting their respective suits to foreclose their respective deeds of trust, and from selling said lands under their said deeds of trust by any other proceeding provided for in the terms of said deed of trust, said lands lying and being situated in Caldwell County, Missouri, and described as follows, to wit: The S. half of section No. 3; the S. half of section No. 4; the NE. quarter of NE. quarter, & W. half of NE. quarter, & the E. half NW. quarter, & NW. quarter SE. quarter of sec. 9, & the NE. quarter & SE. quarter of NE. quarter of section 10, all in township 57 and range 29, containing 1,080 acres of land, which said deed of trust and the lands in controversy are more fully set forth and described in plaintiffs' petition, until further orders of this court.

And it is further ordered by the court that plaintiffs file bond in this cause in the sum of $2,500.00, which is accordingly done, with the Daviess

County Savings Association as principal, and James H. B. McFerran, James Henry, and John A. Tuggle as securities, which bond is approved by the court, said bond being in words and figures following, to wit:

In the Caldwell circuit court, February term, 1881.

DAVID A. GLENN, ACTING SHERIFF OF CALDwell County, Missouri, George T. Crozier, acting sheriff of Daviess County, Missouri, and The Daviess County Savings Association, of Gallatin, Missouri, plaintiffs,

against

85 ALBERT S. WEBB, ROBERT L. BELKNAP, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow, as trustee, and George W. Frank and Darrow, and David W. McNair, as trustee, defendants.

Know all men by these presents that we, the Daviess County Savings Association, of Gallatin, Mo., as principal, and James Henry, John A. Tuggle, and James H. B. McFerran, as securities, are held and firmly bound unto Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees, under the will of Henry R. Remsen, dec'd, and Lew E. Darrow, and George W. Frank and Darrow, & David W. McNair, in the sum of two thousand five hundred dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 2nd day of March, 1881.

The condition of the above obligation is such that whereas David A. Glenn, George T. Crozier, and the Daviess County Savings Association, of Gallatin, Mo., on the day of March, 1881, obtained a restraining order or injunction against the said Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, dec'd, Lew E. Darrow, and George W. Frank and Darrow, and David W. McNair:

Now if the said Daviess County Savings Association shall pay all damages that may be occasioned by said restraining order or injunction, and abide the decision that shall be made therein and pay all sums of money, damages, and costs that shall be adjudged against it or the plaintiffs in the above-entitled cause if the injunction or restraining order be dissolved, then the above obligation to be void; otherwise in full force and virtue.

JAMES HEMRY, [SEAL.]
President of the Daviess Co. Savings Association.

86 JAMES H. B. McFERRAN. [SEAL.]
JOHN A. TUGGLE. [SEAL.]
JAMES HEMRY. [SEAL.]

Petition for removal & bond.

And afterwards, on the 2nd day of March, 1881, it being the third day

of the February term of said circuit court for 1881, the following proceedings were had in said cause, to wit:

D. A. GLENN ET AL., PLAINTIFFS,
against
A. S. WEBB ET AL., DEFENDANTS. } Injunction.

Now on this day comes the defendants, by their attorneys, and file petition to remove this cause to the circuit court of the United States in the district where the cause is now pending.

Said petition and bond for costs being in words and figures following, to wit:

In the circuit court of the State of Missouri in and for Caldwell County.

DAVID A. GLENN, ACTING SHERIFF OF CALDWELL County, Missouri, George T. Crozier, acting sheriff of Daviess County, Missouri, and The Daviess County Savings Association, of Gallatin, Missouri, plaintiffs,
vs.
ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow, as trustee, and George W. Frank and Darrow, and David W. McNair, as trustee, defendants.

Petition for removal to Federal court.

87 To the honorable court aforesaid:

Your petitioners, the defendants in the above-entitled action, respectfully state that the amount in dispute in this action, exclusive of costs, exceeds the sum of five hundred dollars; the amount claimed being about $12,000, as will more fully appear by reference to the original papers filed in this court.

Defendants state that they are each non-residents of the State of Missouri, and were at the time of filing this petition herein, and that they are not and were not at commencement of this action citizens of the State of Missouri, but were and are each of them citizens of the State of New York, except George W. Frank and Darrow, who are residents of the State of Iowa. That the plaintiffs are residents and citizens of the State of Missouri. Petitioners further state that they have reason to believe and do believe that from prejudice and local influence he will not be able to obtain justice in the courts of this State.

Defendants offer herewith good and sufficient security, viz, his bond with proper surety thereon, who are good and sufficient for his entering in the circuit court of the United States copies of all process, pleadings, depositions, testimony, and all papers and proceeding in the case as required by law, and for his appearance in the circuit court of the United States and then and there entering special bail in this cause if the same was origi-

nally required. Said bond is hereto attached, marked "Exhibit A," and made a part hereof.

Defendants therefore pray that this action may be removed for trial into the circuit court of the United States for the district where the same is now pending.

STUART BROTHERS,
Att'ys for Pl'ff.

88 I, Lew E. Darrow, do solemnly swear that I acted as one of the agents of the defendants in negotiating the loan for which the bond and trust-deed in this action was made. That the firm of Frank and Darrow delivered said bond and trust-deed to the plaintiff for said defendant; that the interest-coupons, such as were collected, attached to said bond have been collected through the bank of said Frank & Darrow, and when default was made in the payment of interest said bond was sent to said bank for collection. That I am as well acquainted with the facts stated in the petition as any one could be, and I further state that they are true and that I am fully authorized to make this affidavit in behalf of all parties defendants.

LEW E. DARROW.

STATE OF MISSOURI,
Caldwell County, ss:

Subscribed in my presence and sworn to before me this 2nd day of March, 1881.

WINFIELD MILLER, *Clerk.*

EXHIBIT A.

Know all men by these presents that Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees, George W. Frank & Darrow as principal and as surety, are held and firmly bound unto David A. Glenn, acting sheriff; George W. Crozier, sheriff, and Daviess County Savings Association, of Gallatin, Mo., in the sum of two hundred dollars, lawful money of the United States, well and truly to be paid by us.

The conditions of this obligation are such that if the said defendants named herein shall cause to be entered into the circuit court of the United States for the western district of Missouri, on or before the first day
89 of the next session thereof, copies of all process, pleadings, depositions, testimony, record, and other papers or proceedings required by law, and shall pay all costs awarded by said court for the wrongful removal of this action, and shall appear in said court and enter special bail if required by law so to do, in a cause of action wherein David A. Glenn, sheriff, and George T. Crozier, sheriff, and The Daviess County Savings Association, of Gallatin, Mo., is plaintiff and A. S. Webb et al. is defendant, and which is now pending on petition for removal from the circuit court of Caldwell County, Missouri, to the circuit court of the United States:

Now, if the said A. S. Webb, R. S. Belknap, & W. H. Kane, et al., shall well and truly perform all of the aforesaid acts and requirements

mentioned herein, then this bond to be null and void; otherwise to remain in full force and effect.

This 2nd day of March, 1881.

ALBERT S. WEBB,
ROBERT L. BELKNAP, AND
WM. H. KANE, *Trustees,*
By LEW E. DARROW,
Their Attorney in fact.
GEO. W. FRANK & DARROW,
Principals.
JEFF. DAVIS, *Surety.*
WILLIAM C. GILLIHAN, *Surety.*

We, Jeff. Davis and W. C. Gillihan, the surety herein, do solemnly swear that I am worth more than 3 times the amount of the foregoing bond in property subject to execution in the State of Mo., over and above all my indebtedness.

JEFF. DAVIS..
WM. C. GILLIHAN.

Subscribed in my presence and sworn to before me this 2nd day of March, 1881.

WINFIELD MILLER, *Clerk.*

Demurrer.

90 And afterwards, on the 2nd day of March, 1881, and the third day of the February term of said court for 1881, the following further proceedings were had in said cause, to wit:

DAVID A. GLENN ET AL.
vs.
A. S. WEBB ET AL.

Now on this day come the defendants, by their attorneys, and file demurrer in this action, which said demurrer is in words and figures following, to wit:

DAVID A. GLENN, ACTING SHERIFF OF CALDWELL County, Missouri, George T. Crozier, acting sheriff of Daviess County, and the Daviess County Savings Association, of Gallatin, Missouri, plaintiffs,
against
ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow, as trustee, and George W. Frank & Darrow, and David W. McNair, as trustee, defendants.

Now at this day come the defendants in the above cause, and for their demurrer to the petition say:

That the petition contains no facts which constitute a cause of action against these defendants.

Because there are improper parties plaintiff in above petition.

Because there are improper parties defendants in above petition.

Because there is no equity set out in the bill.

Because no defence is set up in said petition to the securities defendants now hold and are endeavoring to foreclose.

Because there is no allegation of the insolvency of these defendants, or any of them.

91 STUART BROS. *et al.*,
Att'ys for Def'ts.

Order for removal.

And afterwards, on the 2nd day of March, 1881, it being the third day of the February term of said court for 1881, the following further proceedings were had in said cause, to wit:

DAVID A. GLENN, ACTING SHERIFF OF CALDWELL County, Missouri, George T. Crozier, acting sheriff of Daviess County, Missouri, and Daviess County Savings Association, of Gallatin, Missouri, plaintiffs,
against
ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsne, deceased, and Lew E. Darrow, as trustee, and George W. Frank and Darrow, and David W. McNair, as trustees, defendants.

Now on this day come the parties to this action, by their respective attorneys, and the defendants present their petition heretofore filed praying the court that this action may be removed for trial into the circuit court of the United States for the district where the same is now pending, and the court having seen, heard, and considered said petition orders that this action be removed to the said circuit court of the United States, and that all proceedings had in this action be properly certified to said court; and also come the above-named defendants and file their bond for costs,
92 as by law required, with defendants as principal and Jeff. Davis and W. C. Gillihan as sureties, which said bond is by the court approved.

STATE OF MISSOURI,
County of Caldwell, ss:

I, Winfield Miller, clerk of the circuit court in and for said county and State aforesaid, do hereby certify that the foregoing transcript is a full, true, and perfect copy of all the proceedings in the above-entitled cause as the same appears of record and on file in my office.

Witness my hand and the seal of said court. Done at office, in Kingston, this 25th day of April, 1881.

[SEAL.] WINFIELD MILLER, *Clerk.*

And the pleadings and proceedings therein in this court are as follows, to wit:

93 In the circuit court of the United States at Kansas City, Mo., in and for the western division of the western district of Mo.

DAVID A. GLENN, ACTING SHERIFF OF CALDwell County, Missouri, George T. Crozier, acting sheriff of Daviess County, Missouri, and the Daviess County Savings Association, of Gallatin, Missouri, plaintiffs,

against

ALBERT S. WEBB, ROBERT L. BELKNAP, AND Wm. H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow, trustee, and Geo. W. Frank and Darrow, and David W. McNair, as trustee, def'ts.

Answer.

To the judges of the circuit court aforesaid:

Come now the above-named defendants, and for answer to the petition of the plaintiffs herein say:

They admit that the Daviess County Savings Association is a corporation as alleged.

Admit that Glenn and Crozier are acting sheriffs as alleged, and that they are attempting to act as trustees under the deeds of trust referred to. But defendants allege that said deeds of trust have no legal or valid existence, that they have long since been fully paid and cancelled.

They deny that the Daviess County Savings Association is the owner of such deeds of trust, but allege that they have been paid and cancelled as above stated.

Deny that by said deeds of trust, or in any other way, the plaintiffs are the owners or holders of a better title to the lands described therein than these defendants or either of them.

94 Admit that the Daviess County Savings Association is in possession of the lands as alleged.

Admit that they make claim to the lands described.

Admit the allegations of trusteeship concerning defendants.

Admit that defendants hold deeds of trust on said lands as alleged.

Admit that by virtue of said deeds of trust they claim to be the owners of an older and better title than any held by the plaintiff, and they allege that said claim was true.

Admit that plaintiff advertised said lands for sale, and admit that they were enjoined as alleged.

That as to the suits alleged to have been commenced by defendants to foreclose they allege that the same are not pending and were not pending at the date of the filing of said petition.

That all suits for such foreclosure that had been commenced were dismissed by the plaintiffs therein prior to the filing of the petition herein.

That to the allegation of such actions being unnecessary, vexatious, or inflicting injury on plaintiffs, they deny the same.

Admit that Kenney and wife are insolvent; deny the conclusion stated concerning the right of plaintiffs to redeem.

Deny all allegations of loss or injury to plaintiff".

Deny that an action to foreclose by defendants would in the least injure or prejudice plaintiffs or draw any cloud over said lands.

As to the allegation that the suits were not brought for the purpose of settling the rights of the parties hereto to the lands in dispute they
95 deny the same, and allege that such actions were for that purpose, and that such is the only way in which the rights of the parties to this action can be settled in said lands.

That no action at law can settle the questions, for the reasons that there are controlling equities that must first be settled between the parties by a court of equity before the legal titles can be tested by action of ejectment.

Deny that plaintiffs are entitled to any relief herein on the injunction prayed for.

Defendants allege that the trust-deeds under which the plaintiffs claim herein have been cancelled and the indebtedness represented thereby has been paid. That by agreement between these defendants and the Daviess County Savings Association said deeds of trust were cancelled and the records where they were recorded were cancelled. That it was agreed between the defendants and said association that defendants should have the prior lien on said lands by virtue of their trust-deeds aforesaid, and that upon the faith of that agreement defendants advanced in money about ten thousand dollars that went to the use and benefit of said association, and also labor to the amount of one thousand dollars, all of which went to the benefit of said association and was received and appropriated by it, and it still holds the same.

That it was under such agreement that the deeds of trust of the plaintiffs were cancelled and those to the defendants were given.

That in the matters aforesaid the said bank was represented and contracted by and through its cashier and general agent, R. L. Tomlin; that said bank now denies the right and authority of said agent to act for or bind it, but defendants allege that he had such authority, and that
96 since, the bank with full knowledge of all the acts and contracts of said agent and all that he did therein, has fully ratified and confirmed his action therein and made it its own.

That there is now an action pending in this court between these parties commenced before this action, fully involving this issue at length, viz, the case of Webb et al. vs. Martin et al., No. 337, on the chancery docket page 35.

Wherefore defendants pray that plaintiffs petition be dismissed and that defendants have judgment for costs.

STUART BROS.,
For Defendants.

STATE OF MISSOURI,
Jackson County:

I, Lew E. Darrow, on oath state that I am fully acquainted with the facts set forth in the foregoing answer to petition, and that the matters and things therein set forth are true as I verily believe.

LEW E. DARROW.

STATE OF MISSOURI:
Jackson County:

Subscribed in my presence and sworn to before me this 19th day of May, A. D. 1881, by Lew E. Darrow.

WARREN WATSON,
Com'r U. S. Cir. C't. West. Dist. Mo.

97 In the circuit court of the United States, western division of the western district of the State of Missouri.

DAVID A. GLENN ET AL., PLAINTIFFS,
against
ALBERT S. WEBB ET AL., DEFENDANTS.

Now at this day come the plaintiffs herein, and for replication to the answer of the defendants to plaintiffs' petition herein and say:

1. Plaintiffs deny each and every allegation contained in said answer.

2. Plaintiffs having fully replied according to the terms of the stipulation this day filed in the cause of A. S. Webb vs. A. L. Martin, and made applicable to this cause by referring to it as No. 336, pray as in and by their said petition they have already prayed.

McFERRAN & HOLLIDAY,
Att'ys for Plaintiffs.

98 UNITED STATES OF AMERICA:

In the circuit court of the United States within and for the western district of Missouri, western division.

To the judges of the circuit court of the United States for the western district of Missouri, western division:

The Daviess County Savings Association, a corporation organized under the laws of the State of Missouri, doing business at Gallatin, in Daviess County, in the State of Missouri, brings this amended bill against Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, and charges that each of said parties are such residents of New York City and citizens of the State of New York, and that Lew E. Darrow and George W. Frank and David W. McNair are each residents of Corning, Iowa, and citizens of the State of Iowa, and says that the amount involved in controversy in this suit exceeds five hundred dollars exclusive of costs.

And therefore your orator complains, and says before and at the times hereinafter named your orator was a corporation organized under the laws of the State of Missouri, entitled "An act to organize savings associations and to facilitate exchanges," approved the 15th day of February, A. D. 1864.

Your orator further says that Patrick S. Kenney, of the county of Caldwell, and State of Missouri was, on the sixth day of August, A. D. 1879, largely indebted to your orator, to wit, in the sum of thirty-six thousand six hundred and eighty and $\frac{30}{100}$ dollars, which indebtedness was secured to your orators by deeds of trust executed by said Kenney and his wife,

Elizabeth Kenney, as follows: One dated the eighth day of February, A. D. 1872, to Marcus A. Low, trustee for Leslie P. Barnum, on the following real estate, to wit:

99 The southeast quarter of section three (3), the northwest of the northeast quarter and the north half of the northwest quarter of section ten (10), and the northeast quarter of the northeast quarter of section nine (9), all in township fifty-seven (57), of range twenty-nine (29), containing three hundred and twenty acres, to secure the sum of three thousand dollars, bearing ten per cent. per annum interest, which said indebtedness and trust-deed were then held and owned by your orator as assignee of said Leslie P. Barnum; and one trust deed to Cyrus S. McGlaughlin, trustee for Solomon Musser, dated the seventeenth day of November, A. D. 1873, on the following real estate, to wit, the east half of the northwest quarter and the west half of the northeast quarter, of section nine (9), and the south half of section four (4), all in township fifty-seven (57), of range twenty-nine (29), to secure the sum of two thousand one hundred and twelve & $\frac{52}{100}$ dollars, and interest at ten per cent. per annum, which said indebtedness and trust-deed had passed by assignment to and was then held and owned by your orator; and one trust-deed dated the twentieth day of December, A. D. 1873, to John Doolin, trustee for Nicholas Quirk, on the following-described land, to wit: The southeast quarter of section three (3), and the east half of the northeast quarter of section ten (10), all in township fifty-seven (57), of range twenty-nine (29), to secure sixteen hundred and fifty dollars, and interest at ten per cent. per annum, which said indebtedness and trust-deed had passed by assignment to and was then held and owned by your orator; and another trust-deed, dated the twenty-eighth day of August, A. D. 1874, to Robert L. Tomlin, trustee, for your orator on the following lands, to wit, the south half of section three (3), and the south half of section four (4), all in township fifty-seven (57), of range

100 twenty-nine (29), to secure to your orator the sum of five thousand nine hundred and thirty-six dollars & eighty cents, and interest at the rate of ten per cent. per annum; and one trust-deed dated the twenty-fourth day of May, A. D. 1878, to Robert L. Tomlin, trustee for your orator, on the following-described lands, to wit: The south half of section four (4), and the east half of section nine (9), and the east half of northwest quarter of section nine (9), and the north half and the northeast quarter of the northwest quarter of section ten (10), all in township fifty-seven (57), of range twenty-nine (29), to secure to your orator eight thousand and thirteen dollars and thirteen cents, and interest thereon at the rate of ten per cent. per annum, and payable to your orator; and another trust-deed dated the first day of April, A. D. 1876, to William G. Gillihan and Samuel T. Brosius, trustees for your orator, on the following lands, to wit: The south half of section three (3), and the south half of section four (4), and the north half of northeast quarter and the southwest quarter of the northeast quarter, and the east half of the northwest quarter of section nine (9), and the east half of the northeast quarter and the northwest quarter of the northeast quarter, and the north half of the northwest quarter of section ten, and the south half of the northwest quarter, and the southwest quarter of the northeast quarter of section ten, and the northwest quarter of the southeast quarter of section nine, all in

township fifty-seven, of range twenty-nine (29), to secure to your orator the sum of four thousand eight hundred and eighty-nine dollars and sixty-five cents and interest thereon at the rate of ten per cent. per annum, then due and payable to your orator; all of said lands being in the
101 county of Caldwell and State of Missouri, and all of said deeds of trust then being recorded in the recorder's office of said Caldwell County, and at that time existing as valid liens on said lands, and held and owned by your orator; that each of said deeds of trust was given to secure the note of said Kenney, executed at the time of the execution of such deed of trust, and for the payment of the sum of money in such deed of trust mentioned.

Your orator further says that said defendant, Lew E. Darrow, then acting as agent of the defendants Webb, Belknap, and Kane, together with one Robert L. Tomlin, then cashier of your orator, and said Patrick S. Kenney, combining and confederating how to cheat and defraud your orator, did enter into a fraudulent arrangement and combination, and in pursuance thereof the said defendants Webb, Belknap, & Kane, through the agents, said defendants Darrow & Frank, did loan to said Kenney the sum of ten thousand dollars, and for payment thereof said Kenney did execute and deliver to said Darrow his promissory note, payable to the order of said defendants five years after date thereof, with interest at the rate of eight per cent. per annum; and said Kenney and wife did then, to wit, on the 30th day of June, A. D. 1879, execute a deed of trust on one thousand and eighty acres of said lands to secure the payment of said note, and said Kenney then and there executed a note, payable to George W. Frank and said Darrow, defendants, for the sum of one thousand dollars, commission for negotiating said loan; and said Kinney and wife then and there, and on the day last aforesaid, did execute a deed of trust on said 1,080 acres of said lands to secure the payment of said last-mentioned note.

And thereupon said Tomlin pretended and attempted to cancel the
102 said notes of said Kenney, the property of your orator as aforesaid, by marking the same paid with your orator's pay stamp, and did pretend and attempt to cancel and release your orator's said deeds of trust so given to secure the payment of your orator's said notes by marking the same satisfied on the margins of the respective records; and said Kenney then and there executed and delivered to said Tomlin his note for the sum of thirty-six thousand six hundred and eighty and $\frac{30}{100}$ dollars, the amount then due your orator, according to the terms of its said notes so attempted to be fraudulently cancelled as aforesaid, which note was payable to your orator one day after date thereof, and secured by deed of trust then and there executed by said Kenney and wife on the lands aforesaid, described in the original deeds of trust to your orator, being 1,240 acres, in which deed of trust is was expressly provided that the same should be junior and subject to the lien of the deeds of trust so given to secure the respective notes given to said defendants as aforesaid; and to effectually consum'ate said fraud and to destroy your orator's said liens existing under and by virtue of the several deeds of trust so held by your orator as before stated, said defendants, Webb, Belknap, and Kane, by their said agents, Frank and Darrow, defendants, and said Kenney and Tomlin, did file the said deed of trust to defendant McNair and the said deed of trust to said Darrow, trustee of said Webb, Belknap, and Kane, to secure them for said

loan, for record in the office of the recorder of Caldwell County, and a few minutes after the filing thereof did file for record the deed of trust so given to secure the said note so fraudulently executed in lien of the said notes and deeds of trust so held by your orator as aforesaid.

Your orator further states that said Robert L. Tomlin, as its
103 cashier, had no authority as cashier, general manager, or otherwise, or by implication, growing out of the ordinary course of business of your orator to enter into the pretended combination and arrangement for or in behalf of your orator on the said 6th day of August, 1879, or at any other time. That your orator did not and could not confer the pretended authority involved in the execution of said transaction upon said Tomlin as its cashier, or otherwise; that your orator has never ratified, confirmed, or acquiesced in said pretended transaction or any part thereof in any manner, but on the contrary rejected the same at all times and as soon as it came to its knowledge. That the said defendants in entering into said combination and transaction did so without examination, investigation, or inquiry into the extent of said cashier's authority or the ordinary course of business of your orator, and without any inquiry as to who the legally constituted officers of your orator were, and without ever visiting your orator's place of business in relation thereto. That said defendant Darrow, on the 6th day of August, A. D. 1879, aforesaid, in company with said Tomlin, went to the private residence of said Patrick S. Kenney, distant some fifteen miles from your orator's place of business, and in a different county, and then & there procured the note of said Kenney and the deed of trust of said Kenney and wife on said 1080 acres of the lands of said Kenney aforesaid to secure said loan of said ten thousand dollars made to said Kenney as aforesaid; that said transaction took place in the presence of said Darrow, Tomlin, Kenney & wife, and the notary who took the acknowledgement of said deed of trust. That at the same time and place and under the same circumstances said Kenney and wife made
a deed of trust on all of said lands, to secure the note of said Ken-
104 ney to said defendants Frank and Darrow, to defendant McNair, as trustee, for one thousand dollars for negotiating said loan as aforesaid. That after consum'ing said part of said transaction as aforesaid said Darrow, Kenney, and Tomlin repaired to Kingston, the county seat of Caldwell County, Missouri, in which said real estate is situate, and with as little publicity as possible consum'ated the pretended transaction through said Tomlin, cashier of your orator, by entering your orator's deeds of trust on all of said lands satisfied on the margin of the record of said deeds of trust in the recorder's office of Caldwell County as aforesaid. That afterwards, and in pursuance of said fraudulent combination and transaction, said Tomlin cancelled your orator's notes secured by said deeds of trust by entering payment thereon and on said original deeds of trust by means of your orator's pay stamp.

Your orator charges that your orator's officers and agents other than said Tomlin, cashier, had no notice, knowledge, or information of said transaction and proceedings. That all notice, knowledge, and information of said transaction and proceedings was withheld from your orator, its officers, and agents for a long time, and until obtained through other sources than the defendants and said Tomlin and Kenney, although the defendants well knew that said Tomlin, as cashier or otherwise, was exceeding

his authority & powers by entering into said fraudulent combination and transaction and by pretending to carry out and consum'ate the same by entering payment of said notes and satisfaction of your orator's said deeds of trust without payment in fact. Your orator charges that said pretended satisfaction of your orator's deeds of trust and payment of said notes was without payment or satisfaction in fact, and was and is
105 false and fraudulent, without consideration, not done in the business of your orator, and was not the business of your orator, and beyond the powers of said Tomlin as cashier or otherwise, and solely for the benefit of the defendants & said Kenney and Tomlin, and of no benefit whatever to your orator, but instead was a great wrong and injury to your orator. That after the said Tomlin had entered the pretended satisfaction of your orator's deeds of trust on said lands, said Darrow, as agent for the defendants Webb, Belknap, & Kane, filed their deed of trust aforesaid to secure to them the loan of ten thousand dollars as aforesaid, in the recorder's office of Caldwell County aforesaid, as a first lien on all of said lands. And said Darrow also filed Kenney's deed of trust to defendant McNair to secure the payment of one thousand dollars to the defendants Frank & Darrow, a copartnership firm under the style of G. W. Frank & Darrow, being their commission for negotiating said loan of ten thousand dollars in behalf of said Kenney, as a second lien on all of said real estate, then and thereby postponing the payment of your orator's debt to both of said liens, and forcing your orator to a third lien on said lands to secure said Kenney's indebtedness to it instead of a first lien held by it before said fraudulent transaction was consum'ated. That in said deed of trust executed by Kenney and wife to the defendant Darrow, as trustee for the defendants Webb, Belknap, and Kane as aforesaid, it was stipulated therein that if default was made in payment at the option of said defendants it could be prosecuted to judgment and recovery had for the attorney's fees & costs in addition to the amount of debt & interest secured thereby, and which attorney's fees and costs should become a lien on all of said real estate, and similar provisions were contained in the deed of trust ex-
106 ecuted by said Kenney and wife to McNair, trustee for Frank and Darrow, to secure their commission of one thousand dollars as aforesaid. Your orator further says that after default in the payment of the amounts secured in said deeds of trust and each of them, the defendants brought suit by their trustees named in said deeds of trust in the circuit court of Caldwell County aforesaid, the first named for debt and interest and seven hundred dollars attorney's fees and for costs, and demanding that their said deed of trust be foreclosed, and asking the enforcement of the debt, interest, attorney's fees, & costs as a first lien against said land. That defendant McNair, as trustee for the defendants Frank & Darrow, also brought suit of foreclosure in said court and demanded judgment for the debt of one thousand dollars, interest, and costs, & an attorney's fee of one hundred and fifty dollars, and praying the enforcement thereof as a lien second only to the lien of the defendants aforesaid on all of said real estate, prior and superior to any lien your orator might be able to secure on said real estate or any part thereof.

Your orator further charges that said suits and each of them were in consum'ation of the collusion, combination and fraud upon the rights of your orator by the defendants, and to consume and appropriate the common and only security to their own exclusive use and benefit.

Your orator further charges that the notes and deeds of trust pretended to have been cancelled by said Tomlin, as cashier of your orator as aforesaid, are first liens on all of the lands of said Kenney; that at the time said fraudulent transaction was entered into the said indebtedness secured by said deeds of trust to your orator on said lands amounted
107 to the sum of thirty-six thousand six hundred and eighty dollars and thirty cents.

Your orator further charges that said notes and deed of trust to your orator, executed as aforesaid in lieu of your orator's original notes and deeds of trust, are fraudulent and void as against the rights and equity of your orator; and the same are brought here into court to be surrendered up and cancelled. That the deed of trust executed by Kenney and wife for the benefit of Frank & Darrow is fraudulent and void. That said Darrow had notice that said Tomlin, as cashier of your orator, was not engaged in the business of your orator in 'aking the loan by defendant to Kenney, but was acting as the agent of Kenney in procuring said loan. That Tomlin had no right or authority as cashier of your orator to release the deeds of trust held and owned by your orator on said real estate without payment in money or its equivalent. That said Darrow had full notice that said indebtedness to your orator was not paid in money or its equivalent, and that said Tomlin, as cashier of your orator, pretended to cancel your orator's notes and deeds of trust on said real estate for the benefit of Kenney, Tomlin, and himself, and to enable Kenney to procure said loan, without any consideration to your orator and to its great injury. That the defendants herein, through their agent said Darrow, combined and confederated with said Tomlin and Kenney to defraud your orator by means of the transaction and combination aforesaid, with full knowledge and information of all the intrinsic facts herein charged, and falsely and fraudulently to have your orator's notes, and liens securing the same cancelled and satisfied without payment or consideration passing from defendants or said Kenney to your orator therefor, and for the sole benefit of the defendants, said Kenney and Tomlin; and further, by concealing and withholding all information from your orator, its officers and agents, other than said Tomlin, of the intention and purpose to enter into
108 the said fraudulent transaction, well knowing that your orator, its agents and officers, other than said Tomlin, would interpose to prevent its consum'ation, and that the transaction was for the benefit of the defendants and Kenney and Tomlin, and a great wrong and injury upon the rights and interests of your orators.

Your orator further charges that the defendants, through the defendant Darrow, by means of the fraudulent and pretended transaction, further conspired and confederated with the said Robert L. Tomlin and Patrick S. Kenney to hinder, delay, and defraud your orator, a creditor of said Kenney, in the collection of the indebtedness due your orator as aforesaid, and secured by liens upon the real estate aforesaid, by means of the pretended transaction entered into as herein before set forth; that by means of said fraudulent transaction a large proportion of said indebtedness would become an absolute loss to your orator, as the real estate, the only security out of which to realize said indebtedness, is not more than sufficient to satisfy said indebtedness without regard to the pretended liens of the defendants, and said Kenney is otherwise insolvent, and the collection of the whole

of said indebtedness would be postponed for five years from and after the the 6th day of August, A. D. 1879, the date of said pretended transaction. That the defendants would receive the benefit accruing from said loan and interest and commissions, and the possession of the real estate aforesaid would thereby be assured to said Kenney for five years, and his indebtedness to the amount of ten thousand dollars paid off & extinguished. That said Robert L. Tomlin would have put it out of the power of your orator to wind up its business then and now, in contemplation of its owners, and then within the knowledge of said Tomlin, and thereby prolong his official life as cashier of your orator for that period, for the benefit of said
109 confederates and to the great injury of your orator.

Your orator further charges that the defendant Darrow further acted in the double capacity of agent for the defendants Webb, Belknap, & Kane, who made the loan to said Patrick S. Kenney and negotiated the loan to and with said Patrick S. Kenney and in their lawful behalf; and also, as agent of said Kenney, negotiated said loan for and in his behalf with said parties, thereby making contracts for said parties with himself.

Your orator further charges that such contract was illegal and to the injury of your orator, and that the note executed by said Kenney and the deed of trust executed by said Kenney and wife to said McNair to secure said note for one thousand dollars, for said services rendered said Kenney as his agent in procuring said loan by said Darrow, are illegal and without consideration, and constitute no valid claim against said real estate, and as against the rights and equities of your orator should be cancelled, set aside, and held for naught as fraudulent and void.

Your orator further shows that the defendants Webb, Belknap, & Kane have commenced suit, now pending in this honorable court, against your orator and Alphonzo L. Martin, sheriff of said Daviess County, and William W. Clevenger, sheriff of said Caldwell County, in confirmation of said fraudulent transactions, and praying, among other things, that your orator and said Martin & said Clevenger be forever enjoined from enforcing or foreclosing your orator's said trust-deeds so fraudulently marked "satisfied" as aforesaid, and that your orator's original deeds of trust may be declared satisfied & cancelled and forever held for naught, & that said defendant's trust-deed be declared a first lien on 1080 acres of said lands aforesaid superior, prior, & senior to the liens, rights, and interests of your orator on said lands.

All of which actings and doings are contrary to equity and good
110 conscience, and tend to the manifest injury of your orator in the premises.

In consideration whereof your orator prays that the defendants may be required to answer all and singular the matters aforesaid, but not under oath, answer under oath being expressly avoided. That on hearing hereof the cancellation of your orator's said notes and deeds of trust by said Tomlin as aforesaid may be declared void and of no effect, and that the said notes and deeds of trust may be declared valid and in force; that said deeds of trust may be declared to be liens on all of said lands respectively, and prior and superior to the lien and deed of trust to the defendants Webb, Belknap, & Kane, and prior and superior to the lien and deed of trust of the defendants Frank & Darrow aforesaid; and that

your orator may have such other and further relief as may be proper, the premises considered.

THE DAVIESS COUNTY SAVINGS ASSOCIATION,
By HOLLIDAY, McFERRAN & WATERS,
Solicitors for Complainants.

THE DAVIESS COUNTY SAVINGS ASSOCIATION, [SEAL.]
By JAMES HEMRY, *President.*

111 In the circuit court of the United States within and for the western division of the western district of Missouri.

THE DAVIESS COUNTY SAVINGS ASSOCIATION of Gallatin, Missouri,
against
ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow, and Geo. W. Frank, and David W. McNair. } No. 336.

The joint and several answers of Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow, and Geo. W. Frank, and David W. McNair, to the bill of the above-named complainant, the Daviess County Savings Association, of Gallatin, Missouri, as the same stands amended.

These defendants now and at all times hereafter reserving all manner of benefit and advantage to themselves of exception to the many errors and insufficiencies in said bill contained, for answer thereto or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say they admit that the Daviess County Savings Association is a corporation as alleged; they admit that Patrick S. Kenney was indebted to said corporation in August, A. D. 1879, but as to the amount of the indebtedness defendants have neither knowledge nor information sufficient to form a belief, and ask that complain-
112 ants be put upon proof as regards the same; admit that said bank or association held a trust-deed given to Leslie P. Barnum as stated; admit that said bank held a trust-deed given to Solomon Musser; admit that said bank held a trust-deed given to Nicholas Quirk; admit that said bank held a trust-deed given to R. L. Tomlin as its trustee, dated August the 28th, 1874; admit that said bank held another trust-deed given to R. L. Tomlin as trustee, dated May 4th, 1875; admit that said bank held another trust-deed given to William C. Gillihan and Samuel T. Brosius, its trustees, dated the 1st day of April, 1876; admit that said deeds were of record in the office of the recorder of deeds of Caldwele County, Missouri. Defendants deny that said deeds, or any of them, were valid and existing liens upon the lands therein named. Defendants allegl that said deeds were executed at a date, each of them, when the said Kenney was a married man; that they were upon lands constituting the homestead of said Kenney and wife, and that the wife of said Kenney failed to join therein as to either of said deeds either in releasing her dower right or homestead right in any of the property so attempted to be conveyed by said

Kenney. That as to the amount that said deeds of trust were actually given to secure these defendants have not knowledge or information sufficient to form a belief, and demand proof of such fact. Defendants deny each and all charges of fraud, or combination, or confederation, or any intent to cheat as at any time existing between Lew E. Darrow, Robert L. Tomlin and Patrick S. Kenney, or as between said Tomlin and either of said parties. Defendants deny that the said Lew E. Darrow, as the agent or acting agent of Webb, Belknap, and Kane, confederated or combined with any intent to defraud with Robert L. Tomlin and Patrick S. Kenney or with either of said parties. Defendants deny that Darrow and Frank in the transaction set forth were acting as the agents of said Webb,
113 Belknap, and Kane, but allege that they were acting as the agents of Patrick S. Kenney in procuring the loan from said Webb, Belknap, and Kane.

Defendants admit that said Webb, Belknap, and Kane, as trustees, did loan to Patrick S. Kenney the sum of ten thousand dollars, and they further admit that said Kenney and wife did execute a deed of trust to secure the payment of said money at the date stated and on the lands described, as set forth in said complaint.

Defendants further admit that said Kenney and wife did execute their note and deed of trust at the time and on the lands stated to Geo. W. Frank & Darrow to secure the sum of one thousand dollars (1,000) for securing and negotiating said loan.

Defendants admit that R. L. Tomlin, as the cashier and agent of said bank, did cancel and mark as paid all the notes of said Kenney and all the deeds of trust made to secure the same, and did cancel of record said deeds of trust and did fully release the same; and they admit that said Kenney executed a new deed of trust and note covering, and more than covering, all of said indebtedness, to wit, in the sum of thirty-six thousand six hundred and eighty & $\frac{30}{100}$ dollars, which note and deed of trust was made payable to said Daviess County Savings Association.

Defendants further admit that said deed of trust, so executed by said Kenney and wife to said Daviess County Savings Association, expressly provided that it should be junior and inferior to the liens of these defendants under their several deeds of trust; admit that the deeds of trust of these defendants were first placed of record in the office of the recorder of Caldwell County, Missouri, and afterward the deed of trust of the
114 complainant for thirty-six thousand six hundred & eighty & $\frac{30}{100}$ dollars was placed of record in the office of said recorder of Caldwell County, Missouri.

Defendants deny, collectively and severally, all allegations of fraud, combination, or intent to cheat in any manner on their part, or the part of either of them, in any part or portion of said transaction, and deny all allegations of fraud and combination as between them, or any of them, and the said Kinney and Tomlin, or either of them, and deny emphatically all and each allegation of want of authority on the part of said Tomlin, as cashier or agent of said bank, to do and perform each of said acts, and the defendants here allege the truth of said transaction to be as follows:

That at and prior to the year A. D. 1879 the Daviess County Savings

Association was a corporation doing a general banking business at Gallatin, Missouri; that as a part of its business it had been for years placing loans of money and taking deeds of trust upon real estate to secure the same.

That it had been for years making various contracts in relation to deeds of trust so taken, cancelling and releasing its liens upon partial payments of the same, and at various times releasing its liens upon such real estate without any payments whatever being made upon the debt, and taking entirely new and different securities.

That from the year 1873 up to January, 1881, Robert L. Tomlin was its cashier, general agent, and general manager, and transacted and carried on all of its business of every kind, nature, and description; that he made all of its contracts of whatever kind, negotiated its loans, made all contracts in reference thereto, and took and released all of its securi-
115 ties for said loans, as before stated, cancelled its liens upon said real estate under said deeds of trust, upon partial payment or otherwise, as he conceived or thought to be for the best interests of said banking association.

That during the year aforesaid the president of said bank lived and resided in Colorado, and took no share whatever in the operation, running, or transacting any of the business of said bank, but had full knowledge and well understood that all the business of said bank was transacted by the said R. L. Tomlin, its general agent, cashier, and general manager as aforesaid.

And the said president never in any single instance, from the year 1873 up to the year 1881, transacted, directed, or executed any of the business of said bank. That during only a portion of said time did said bank have any directors except the said R. L. Tomlin, who was at all times a director, and the managing director, of said bank as before stated.

That during any portion of said time in which said bank may have had directors the said directors never did, except said Tomlin, either severally or collectively as a body, attempt to manage, control, direct, or superintend any part or portion of the business of said bank. That they never did, either collectively or severally, except said Tomlin, take or cancel any of the deeds of trust given to said bank, although during said years they were numbered by hundreds. That they never did, either collectively or severally, except said Tomlin, make any contract whatever of any nature, kind, or description on the part of, or in behalf of, said bank. That they placed said Tomlin in said bank as the cashier, general agent, and general manager to transact all and every kind of business that
116 might arise in said bank, and held him out to the public as being fully and generally authorized to do all and any acts that said bank might or could do, and made any and all contracts that said bank might or could make. That during the entire time from January, 1873, to January, 1881, there never was a business meeting of said directors for any purpose so far as directing or controlling any of the business of said bank was concerned, or for any other purpose. That the directors of said bank well knew and understood that during said entire time from January, 1873, to January, 1881, the said Tomlin, as the general agent, cashier, and general manager of said bank, was making each and every contract made by said bank of whatever nature, kind, or description. That he was making loans of its money, taking deeds of trust, and satisfying and cancelling

them—cancelling them of record at times when they were paid, and at times when only partial payments were made, and at other times when no payments were made at all upon the indebtedness secured by said deeds of trust.

That the authority to do said acts, by said Tomlin, during all the time aforesaid was fully conferred by all the stockholders, directors, and other officers of said bank, upon said Tomlin, and they at all times approved of, acquiesced in, and ratified all of his acts as aforesaid, as cashier, managing director, general agent, and general manager of said bank, as before stated.

Defendants allege that in the year 1879 the capital stock of said bank was about five thousand dollars; that at that time the said Kenney owed said bank somewhere near thirty thousand (30,000) dollars. That prior to the 30th day of June, 1879, the county of Daviess, which was a large depositor in said bank, had ordered its funds to be withdrawn there-
117 from. That many other depositors were calling upon said bank for payment, and it was in a condition of bankruptcy and insolvency. That the said Kenney was insolvent and not able to pay any part or portion of the debt he owed to said bank. That the deeds of trust given by said Kenney to secure his indebtedness were many, if not all of them defective, the same not having been joined in or signed by the wife of said Kenney, and said deeds of trust not covering or affecting her dower interest or homestead right in any of the lands of said Kenney. That added to these difficulties there were also prior liens upon the real estate of said Kenney; one in favor of James D. Power, secured by deed of trust upon the real estate of said Kenney for the sum of fifty two hundred (5,200) dollars, which lien was prior and superior to any and all deeds of trust held by the said bank upon the lands described in the complaint. That there were also three judgments that were liens upon said lands, and all of them prior and superior to any of the liens held by said bank, said judgments amounting to about the sum of sixteen hundred eighty-nine & $\frac{86}{100}$ dollars, said judgments being in favor of the parties named in the complaint. That said deed of John D. Power was liable to be foreclosed by advertising in a county different, in which the Daviess County Savings Association was located, and said lands taken from said association without its knowledge. That under these circumstances the said Daviess County Savings Association, by and through R. L. Tomlin, its cashier, general agent, managing director, and general manager, applied to these defendants and caused said Kenney to apply for a loan, of ten thousand dollars upon all the real estate described in the complaint and proffered, agreed, and proposed to give to the defendants the first and paramount lien upon all of said real estate for said loan, and fur-
118 ther agreed to give to said Geo. W. Frank & Darrow a commission of one thousand dollars for negotiating and procuring said loan, and the said Daviess County Savings Association as an inducement to procure said loan agreed by and through its managing director aforesaid to cancel each and all of its deeds of trusts aforesaid, and to give to these defendants a first lien, as before stated.

That the application of said Kenney was forwarded to Geo. W. Frank & Darrow by the Daviess County Savings Association, and they as the agents of said Kenney, upon the representations made by said bank as to the release of its deeds of trust and the giving to the parties making said

loan upon all of said lands a first lien did procure the remaining defendants, Belknap, Webb, and Kane, as trustees, to make the loan aforesaid upon the express condition and stipulation that they should have the first and unquestionable lien by deed of trust upon all of said lands, which condition was well known, accepted, and agreed to, by said Daviess County Savings Association.

And in the same connection it was agreed between Kenney, the Daviess County Savings Association, and Geo. W. Frank & Darrow that the said Frank & Darrow should have the second lien upon said lands by deed of trust for the commission of one thousand dollars aforesaid. That it was further agreed between the said Kenney and the said bank that the said Kenney would execute a new note to said bank covering all his indebtedness and a new deed of trust covering all the lands before conveyed by deed of trust to said bank or attempted to be conveyed, and also other and different lands, to secure said indebtedness, and that the said new deed of trust should be signed by the said Kenney and his wife. Defend-

119 ants allege that the said Daviess County Savings Association, by and through the said R. L. Tomlin, its general manager and managing director as aforesaid, furnished these defendants with an abstract of the title of the lands said Kenney, representing thereby the judgments against said Kenney in Caldwell County to be valid liens against the real estate aforesaid, and the new deed of trust of the said John D. Power to be also a valid lien aga'nst said lands, all which were prior and superior to the liens of said bank.

That the said Daviess County Savings Association with the consent of said Kenney agreed, requested, and directed that out of the loan to be made by the defendants Webb, Belknap, and Kane that the Power deed of trust and each and all of said judgments should be paid off, which was agreed to by said defendants. And it was further agreed by said parties that any sum of money remaining after the payment of said liens should be paid direct by the defendants Webb, Belknap, and Kane to the Daviess County Savings Association, to be applied by said association upon the indebtedness of said Kenney to it. That in execution of said contract the defendants, at the request of said Daviess County Savings Association, forwarded to it on or about August 1st, 1879, all papers necessary to be executed by the said Kenney and wife, in order to carry out the said transaction and contract so far as the same concerned Kenney and these defendants. And that the said Daviess County Savings Association by and through its cashier, managing director, and general manager, R. L. Tomlin, procured the execution of said papers by the said Kenney and wife the deeds of trust of these defendants, each being upon ten hundred and eighty (1,080) acres of land.

120 That in carrying out said transaction and contract the said Daviess County Savings Association just after taking said deeds of trust in favor of these defendants took a new deed of trust to said association from said Kenney and wife on twelve hundred and forty (1,240) acres of land, and also took a new note covering all the indebtedness of said Kenney to said bank covered by its prior deeds of trust.

That in furtherance of said contract the said parties on or about August 6th, 1879, met for the purpose of closing said transaction, and these defendants under and by direction of the said Daviess County Savings As-

sociation given by and through its cashier, general manager, and managing director, R. L. Tomlin, proceeded to and did pay off with the consent of said Kenney out of the loan aforesaid, the full amount of the judgments described in the complaint, to wit, sixteen hundred eighty-nine & $\frac{86}{100}$ dollars, and the said judgments were then and there satisfied and cancelled upon the records of Caldwell County, Missouri.

That under the direction of the Daviess County Savings Association as aforesaid, with the consent of said Kenney, defendants Geo. W. Frank & Darrow proceeded to, and did satisfy out of said loan the trust-deed of Power herein before mentioned in the sum of fifty-two hundred (5,200) dollars. That as a part and portion of said contract all the old notes and deeds of trust that were held by said bank against said Kenney were cancelled, satisfied, and fully paid by the execution of said Kenney of the new note and deed of trust signed by himself and wife, and herein before stated, and a partial payment of money as hereinafter referred to. All of which was done by the Daviess County Savings Association by and through its cashier, general manager, and managing director R. L. Tomlin. That each and all of said old deeds of trust held by said bank
121 were satisfied and cancelled upon the records of Caldwell County, Missouri, as a part of said transaction under the contract aforesaid, by the Daviess County Savings Association, and the two deeds of trust to these defendants from Kenney & wife were placed of record in said county, after which the Daviess County Savings Association placed of record its new deed of trust signed by Kenney and wife, covering the twelve hundred & forty (1,240) acres of land, and securing the new note as aforesaid.

That in furtherance of the agreement aforesaid, the said Geo. W. Frank & Darrow, through the direction of the said Daviess County Savings Association and the consent of said Kenney, did pay to R. L. Tomlin, cashier & managing director as aforesaid, the sum of three thousand (3,000) dollars cash, which the said Daviess County Savings Association entered as a payment upon the new note of said Kenney, and that afterwards, and in furtherance of said agreement aforesaid, the said Geo. W. Frank & Darrow paid, with the consent of said Kenney, and under the direction of said Daviess County Savings Association the balance of said loan to the Daviess County Savings Association, to wit, two hundred & six & $\frac{16}{100}$ dollars, which the Daviess County Savings Association applied in payment of indebtedness that was due from said Kenney to said bank, and which was not at that time and never had been secured in any manner to said bank, and which was at that time and had been wholly worthless to said bank because of the insolvency of said Kenney.

The old notes and deeds of trust held by said bank against said Kendey, were not only paid off and marked satisfied upon their face and upon the records as aforesaid, but in furtherance of said transaction on the 7th day of August, 1879, they were marked paid off and fully satisfied
122 upon the books of said bank, and so entered by said association, and said old deeds and papers were separated from the papers of said bank and delivered to said Kenney, and the new note of thirty-six hundred & eighty & $\frac{30}{100}$ dollars, was entered upon the books of said bank and placed among its papers, together with the new trust-deed securing the same, and the said three thousand (3,000) cash was also entered upon its books and placed in the general funds of the bank as its own property, and has from that day to this been used by said bank as its own property.

That since the giving of the said new deed of trust by the said Kenney, the said Kenney having failed to perform its conditions, the said bank, on the 15th day of April, 1880, received from said Kenney all of said lands, to wit, twelve hundred and forty (1,240) acres, and gave back to said Kenney a lease for said lands; that said bank still continues to have upon its books at this time the entry of satisfaction of the old notes and deeds of trust, and still carries against said Kenney and among its papers and assets the new note and the new deed of trust; that it never has at any time tendered back any of the money, papers, or benefits received by said transaction; that the payment of each of the several sums out of said loan was a payment directly for the use and benefit of the Daviess County Savings Association, and it has profited and held on to all benefits so received; that, while all the matters herein set forth by respondents were fully known by said association, its officers and stockholders, and were placed of record in its books from the very date of the transaction as aforesaid, and that while said Daviess County Savings Association is now seeking to cheat and defraud these defendants, and each of them, out of the monies aforesaid, and all of them, that still said bank has fully ratified,
123 acquiesced in, and confirmed each and all of the acts of the said Tomlin as herein before set forth by these defendants.

Defendants here deny each allegation in the complainants' bill not herein expressly admitted.

Defendants deny the allegation that said bank did not and could not confer the authority exercised by said Tomlin upon him, and they allege that said banking association could and did confer such authority.

Defendants deny the allegation that said bank has not ratified, confirmed, and acquiesced in the said acts of said Tomlin, and allege that it has ratified, confirmed, and acquiesced in his said acts.

Defendants deny that said bank has ever at any time rejected said transaction or repudiated the said acts of said Tomlin.

Defendants deny all allegations as regards making said loan without knowing who was managing the affairs of said bank, and they allege that they were advised by the public acts of said Tomlin in entering satisfaction of deeds of trust on public records, and by his being placed in the sole charge and control of said bank and its business by the officers and stockholders thereof, and by the usual course of business of said bank, and by the express declaration of said Tomlin that said Tomlin had full authority to do all that he did do in this said transaction.

Defendants deny that said Darrow accompanied said Tomlin in procuring the signature of said Kenney and wife to said deeds of trust, or that Darrow was present at the time of their signing, and alleges that said bank procured said signatures in the same manner that it often did such acts in its usual course of business, and also took its own new deed of trust in the same manner.

124 Den*ies* that there was any secrecy used in said transaction, so far as these defendants were concerned, and alleges that their acts were public and in the utmost good faith, and that the acts of said Tomlin were made public by immediately making a record in said bank.

Deny all fraudulent intent or combination on the part of any of the parties connected with said transaction.

Deny that any notice of such transaction was withheld from any of the officers, agents, or stockholders of said bank.

Deny that the cancellation of said notes and deeds of trust by said Tomlin was either false, fraudulent, or without consideration, or was not done in the usual course of business of said bank.

Deny that said acts were of no benefit to said bank, and allege that it was the only thing that saved it from bankruptcy and ruin.

Deny that said transaction placed said bank in any different or worse position than it was before, and allege that it simply relieved it from the impending danger of said prior liens.

Deny that there were any suits brought by any of these defendants, or that there are any suits pending in the circuit court of Caldwell County, Missouri, or elsewhere upon either of said deeds of trust.

Defendants deny that any suits were commenced through fraud, combination, or collusion on said deeds of trust.

Deny that said bank has any lien under said trust-deeds so cancelled by said agent, and allege that its pretended claims based thereon are inequitable and fraudulent and made for the purpose of cheating these defendants, and each of them.

Deny that said second deed of trust and new note taken by said
125 bank are void, and allege that they were taken by authority, and are now held by said bank, which claims under them.

Defendants deny that either of their deeds of trust is fraudulent and void, or that they knew that said Tomlin was not engaged in the business of said bank, and allege that all that he did was in the business of said bank and for its benefit.

Defendants deny that they knew that said Tomlin had no authority to do what he did, and allege that he had such authority, and that said bank has fully ratified and confirmed his acts and is estopped from denying his authority.

Defendants deny that said Darrow knew that the indebtedness to said bank was not paid in money or its equivalent, and allege that he knew that it was paid in money and its equivalent.

Deny that said loan was in any sense for the benefit of Kenney or Darrow or Geo. W. Frank & Darrow, or for said Tomlin as an individual.

Deny any knowledge, on the part of these defendants, that any one connected with said bank would in any event oppose said transaction.

Deny any attempt to hinder, delay, or defraud said bank in the collection of its debts.

Deny that transaction postponed in any degree the collection of debt or debts due said bank.

Deny that in any sense the real estate could be assured to said Kenney for any length of time.

Deny any contemplation on the part of said bank or its officers of voluntarily winding up its business, unless it may have been the necessity of being compelled to close its doors when called upon to pay its just debts unless it could receive the aid extended by these defendants.

126 Deny that said transaction could in any sense prolong the official life of said Tomlin, and allege that he was subject to be removed at any time.

Deny that said Darrow acted in any dual capacity or as the agents of said Kenney and also the agent of said Belknap, Webb, and Kane, but allege that he procured said loan for said Kenney and as his agent, and

simply sought, so far as the other defendants were concerned, to carry out the contract that his principal had made, and upon which condition alone said Belknap, Webb, and Kane made the loan, namely: that they should have an undoubted and unquestionable first lien upon the lands aforesaid for their money.

Defendants deny that the deed of trust for one thousand dollars is without consideration or void.

Defendants admit that the said Webb, Belknap, and Kane now have an action pending in this court seeking to enforce their lien and asking to enjoin said bank in its attempted fraud upon their rights.

Defendants having fully answered, stand ready and willing to prove the matters of defence herein, and ask that this cause be dismissed and that they have judgment against complainants for the cost herein.

STUART BROTHERS,
Solicitors for Defendants.

127 In the circuit court of the United States within and for the western division of the western district of Missouri.

THE DAVIESS COUNTY SAVINGS ASSOCIATION of Gallatin, Missouri,
against
ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow George W. Frank, and David W. McNair. } No. 336.

The replication of the complainants herein to all answers and amended answers on file of the defendants aforesaid.

These repliants, saving and reserving to themselves all and all manner of advantage of exceptions which may be had and taken to the manifold errors uncertainties and insufficiencies of the answer of the said defendants for replication thereto say that they do and will aver, maintain, and prove *that* its said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain and insufficient in the law to be replied unto by these repliants without that that any other matter or thing in the said answer contained materially or effectually in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied is true; all which matters and things these re-
128 pliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by their said bill they have already prayed.

HOLLIDAY, WATERS, AND MCFERRAN,
Solicitors for Repliants.
DAVIESS COUNTY SAVINGS ASSOCIATION, [SEAL.]
By JAMES HEMRY, *President.*

129 And afterwards, to wit, on the 3rd day of November, during said term, the following proceedings were entered, to wit:

D. A. GLENN ET AL.
against } 336.
A. S. WEBB ET AL.

and

A. S. WEBB ET AL
against } 337.
A. L. MARTIN ET AL.

This day again come the parties, by their solicitors, and this cause is further heard and submitted to the court.

And afterwards, to wit, on the 5th day of November, during said term the following decree & order was entered, to wit:

130 In the circuit court of the United States for the western division of the western district of Missouri, at Kansas City, Missouri.

DAVID A. GLENN, ACTING SHERIFF OF CALDWELL COUNTY, MISSOURI, and George F. Crozier, acting sheriff of Daviess County, Missouri, and The Daviess County Savings Association of Gallatin, Missouri, plaintiffs,
against
ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, and Lew E. Darrow, trustee, and George W. Frank and Darrow and David W. McNair, trustee, defendants. } No. 336. Equity docket.

and

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,
against
ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, William W. Clevenger, sheriff of Caldwell County, Missouri, and The Daviess County Savings Association, of
131 Gallatin, Daviess County, Missouri, defendants. } No. 337. Equity docket.

The above actions having, by the written stipulation of the parties thereto been consolidated for trial and submitted to the court and tried together, and the court having heard the evidence and agreement of counsel, and being fully advised, orders, adjudges, and decrees as follows:

First. That as to action No. 336, the complainants' bill is hereby finally dismissed, the equities in said action being with the defendants.

And it is further ordered and adjudged that the defendants have and

recover of the complainants in said action the costs thereof, to be taxed by the clerk.

Second. That in number 337, above set forth, the court finds the equities to be with the complainants, and that the prayer of their petition should be granted.

It is therefore ordered, adjudged, and decreed that the defendants in said action, to wit: The Daviess County Savings Association of Gallatin, Missouri, Alphonzo L. Martin, and William W. Clevenger, and each of them are hereby perpetually enjoined from selling or attempting to sell under the following trust-deeds, or from foreclosing or attempting to forclose the same, to wit:

1st. A trust-deed dated Febr'y 8, 1872, recorded in book K, page 84, of the proper records of Caldwell County, Missouri, said deed being given by P. S. Kinney and wife to M. A. Low.

2nd. A deed of trust dated November 17, 1873, recorded November 17, 1873, in book K, page 3, of the records of Caldwell County, Missouri, said deed being given by P. S. Kinney to Solomon Musser.

3rd. A trust-deed dated December 20th, 1873, recorded January 8, 1874, in book K, page 15, of the records of Caldwell County, Mis-
132 souri, said deed being given by P. S. Kinney and wife to Nicholas Quirk.

4th. A deed of trust dated August 28, 1874, recorded September 3rd, 1874, in book K, page 67, of the records of Caldwell County, Missouri, given by P. S. Kinney and wife to R. L. Tomlin, as trustee.

5th. A deed of trust dated May 24, 1875, recorded May 29, 1875, in book K, page 161, of the records of Caldwell County, Missouri, given by P. S. Kenney to R. L. Tomlin, as trustee.

6th. A deed of trust dated September 29, 1874, recorded October 2nd, 1874, in book K, page 74, of the records of Caldwell County, Missouri, given by P. S. Kenney and wife to R. L. Tomlin, as trustee.

7th. A deed of trust dated April 1st, 1876, recorded April 13, 1876, in book K, page 212, of the records of Caldwell Co., Mo., said deed being given by P. S. Kenney & wife to Wm. C. Gillihan and Samuel T. Brosius, as trustees.

It is further adjudged and decreed that the cancellation of each of said deeds of trust by R. L. Tomlin, cashier of the Daviess County Savings Association, on the 6th day of August, 1879, is held and adjudged valid and binding as against said association, and the complainants in this action, under their deed of trust dated July 1st, 1879, and recorded in book O, page 208, on August 6th, 1879, in the records of Caldwell County, Missouri, are held and adjudged to have a prior, senior, and superior lien upon the lands named in said deed of trust, as against all rights, liens, or equities of the said Daviess County Savings Association.

It is further adjudged that the complainants in said action No. 337 have and recover of and from the defendants therein the costs of said action, which are to be taxed by the clerk of this court.

Signed in open court this 8th day of November, 1881.

A. KREKEL, *Judge.*

133 The following testimony was introduced on the hearing of this cause, to wit:

134 In the circuit court of the United States for the western division of the western district of Missouri, October term, 1881.

ALBERT S. WEBB ET AL., PLAINTIFFS,
against.
ALPHONZO L. MARTIN ET AL., DEFENDANTS.

Stuart Bros., attorneys for plaintiffs; McFerran, Holliday & Waters, att'ys for defendants.

PLAINTTIFF'S ABSTRACT OF EVIDENCE.

EVIDENCE ON PART OF PLAINTIFFS.

I.

Agreement as to evidence.

1st. That all trust-deeds referred to the material parts thereof may be copied into the deposition with like effect as if the original or certified copies here attached. This also applies to notes referred to in said deeds. Records of trust-deeds may be proven in same way; also marginal entries.

2nd. Either party may also introduce original or certified copies of such deeds and notes.

3d. In proving contents of the bank-books they may be copied into the depositions.

II.

Stipulation as to plaintiffs right to sue.

1st. Defendants admit that plaintiffs are trustees under the will of Henry Remsen, deceased, duly qualified and acting as such under the laws of the State of New York, as charged in the petition, and further proof of the foregoing allegation in plaintiffs' petition is hereby waived on the trial.

J. A. HOLLIDAY,
Att'y for Def'ts.

III.

Stipulation as to corporate capacity of d'f't.

135 1st. It is admitted by the defendant The Daviess County Savings Association that it is and was duly incorporated under the laws of Missouri, as a banking institution as alleged.

IV.

WILLIAM S. ABELL, testified:

My age is 47; I am recorder of Daviess County, Mo.; have lived in Gallatiin, said county, 22 years; have known the Daviess County Savings Association (the bank) for 15 years. R. L. Tomlin has been its cashier for

the last 10 years. McFerran was its prest. until Henry was elected; Henry has been signing his name as prest. and cashier since Jan'ry 1st, 1881. McFerran has been residing in Colorado since 1873; has been back here about once every year, remaining one week each time. For the last six years Tomlin was cashier, and seemed to do all the business. I know more about it in the last 6 years, as I have been recorder for that time.

What land was sold McFarran made deeds to, but all other business done in my office was done by Tomlin.

In one or two cases I know that Tomlin made the contract in regard to the sale of the land. In all other cases I don't know who made the contracts.

As far as I know Mr. Tomlin has, during the last 6 years, handled and controlled the finances of the bank, its notes, mortgages, deeds of trust, taken its securities and released same, and had the general management of the business.

Ques. During that time do you know of any other person claiming to be an officer of the bank who handled its funds and invested them, who took or released its securities, or had anything to do with the general management of the bank? If so, state who that person was.

Answ. During the year 1880 Henry made two deeds that I now remember; he may have made more, and he is the only person except
136 Tomlin that I know of having anything to do with the business of the bank. I had *in* my office in the bank in the winter of '72 and '73 & '4; don't remember which. I was collector of this township at the time. Have been in the bank a good deal during the last 6 years. Sometimes every day for a while, and sometimes I might not be in for a week.

The book to which you call my attention is trust-deed record H, of Daviess Co., Mo. On page 4 is the deed of trust from Prenett to Leslie P. Barnum for 4,800. The acknowledgment of satisfaction is as follows:

Received satisfaction in full of the annexed deed of trust, July 13th, 1876.

DAVIESS COUNTY SAVINGS ASSOCIATION,
Assignee of Leslie P. Barnum,
By R. L. TOMLIN, *Cashier.*

This deed-book has a printed form. I will give a copy of this deed upon a blank corresponding with said form. (Here witness gave notary of said deed, which is attached as Exhibit A to his deposition. Said exhibit is made a part of this abstract by simply referring to same. It is lengthy, and is not material, except to show the form used and contents of all of deeds hereafter referred to.)

Yes; I will now take said book and turn to such deeds of trust as have been satisfied by the Daviess Co. Savings Association through their cashier, R. L. Tomlin, or any other person or officer of said bank, and give date of deed, name of parties, amount, page of record, and acknowledgement of satisfaction in the language as used on the record:

One dated Apr. 29, '73. M. B. Fry to the bank (McDowell, trustee) for $500. Record, p. 9.

Received satisfaction in full on the within deed of trust this Jan'y 21, 1874.

R. L. TOMLIN,
Cashier Daviess Co. Sav. Asso.

137 One dated April, '73, Wirt and wife to Tomlin, trustee, for bank, am't, $4,000.00, page 10.

Received satisfaction in full on nine acres of land sold by Wm. E. Wirt to James Rogers, dated Sept. 11, '74, being land, to wit, beginning at SW. corner of SE. ¼ of NE. ¼ sec. 8, town. 59, range 27; thence north 45 degrees; west, $11\frac{17}{100}$ chains, and thence north $49\frac{3}{4}$ degrees; west $6\frac{90}{100}$ chains; south, 40 degrees and 18 minutes; east, $16\frac{40}{100}$ chains; thence west $8\frac{10}{100}$ chains, to place of beginning.

R. L. TOMLIN, *Trustee.*

(On the margin:) Note this entry.

There are three others besides the one I have read, and then follows this:

Received full satisfaction in full of this deed of trust, Nov. 22, '75.

R. L. TOMLIN,
Cashier Daviess Co. Sav. Asso.

One dated June 11, '73, for $400, page 16, by Thos. J. Surary & wife.

Received satisfaction in full of the within deed of trust this 30' day of April, 1875.

DAVIESS CO. SAV. ASSOC., *Assignee,*
By R. L. TOMLIN, *Cashier.*

One dated June 10, '73, Brown to bank, for 750.00, page 17.

Received satisfaction in full on the within deed this Nov. 12th, '73.

R. L. TOMLIN,
Cashier Daviess Co. Savings Asso.

One dated June 25, '73, Clinger to bank, $654.70, p. 24.

Received satisfaction in full of the within deed of trust this March 23, '78.

R. L. TOMLIN,
Cashier Daviess Co. Sav. Asso.

One dated July 24, '73, Cooper to bank, $729.40, p. 33.

138 Rec'd satisfaction in full on the within deed of trust, M'ch 28, '74.

R. L. TOMLIN,
Cashier Davis Co. Sav. Asso.

One dated Aug. 27, '73; E. C. Westonetal to bank (Tomlin trustee), $400, p. 40.

Apr'l 8, '76, in consideration of the sum of $199.00, the receipt of which is hereby acknowledged, the within mortgage is satisfied in full as to the SW. ¼ of NW. ¼ of sec. 21, town. 59, R. 27; and the same is hereby released.

R. L. TOMLIN,
Trustee, and Cashier Davis Co. Savings Asso.

(On the margin:) Note this entry.

Rec'd satisfaction in full of the annexed mortgage or deed of trust this Oct. 10th, '76.

R. L. TOMLIN,
Trustee, Cashier Davis Co. Sav. Asso.

One dated May, '73; Brown and wife to bank, $430, p. 44.

Rec'd satisfaction in full of the trust-deed recorded on this page, Jan'y 25, '76.

R. L. TOMLIN,
Trustee, Cash'r Davis Co. S. A.

One dated May, '73; Davis & wife to bank, $365, p. 45.

Rec'd full satisfaction of the annexed mortgage Sept. 21, '75.

R. L. TOMLIN,
Trustee, and Cash'r D. Co. S. Asso.

One dated Dec. 12, '73; Martin & wife to bank, $750, p. 71.

Rec'd satisfactioh on the within mortgage Feb'ry 6th, '75.

R. L. TOMLIN,
Cash'r D. Co. S. A.

One dated Dec. 29, '73 to bank, $500, p. 76.

139 Rec'd satisfaction in full this June 16th, '74.

WM. McDONUL, *Trustee.*
R. L. TOMLIN,
Cash'r D. Co. Sav. Asso.

One dated Jan'ry 13, '74; Brown and wife to bank, $799.55, p. 82.

Rec'd satisfaction in full on the within, Nov. 23, '74.

R. L. TOMLIN,
Cash'r D. Co. Sav. Asso.

One dated Jan'ry 17, '74; Kramer to bank, $1,000, p. 83.

Rec'd satisfaction in full Feb'y 1, '75.

R. L. TOMLIN,
Trustee, and Cashier D. Sav. Asso.

One dated Feb'y 12, '74; Bridges & wife to bank, $600, p. 95.

Rec'd full satisfaction of annexed deed Jan'ry 28, '76.

R. L. TOMLIN,
Trustee, and Cash'r of Daviess Co. S. A.

One dated March 2d, '74; Shirley to bank, $605.00, p. 102.

Rec'd satisfaction in full of annexed deed M'ch 27, '78.

R. L. TOMLIN,
Cash'r D. C. S. A. & Trustee.

One dated M'ch 3, '74; Honell to bank $55.00.

Received satisfaction in full by payment of the money due July 6, '78
R. L. TOMLIN,
Cash. D. Co. S. A.

One dated Feb'y 14, '74; Hughes to bank, $1,400.00, p. 104.

Received satisfaction in full of this trust-deed so far as the same is a lien on SW. ¼ of NW. ¼, and NW. ¼ of SW. ¼ of sec. 14, t'w'p 59, R. 29; 80 acres, Sept. 7th, '75.
R. L. TOMLIN,
Trustee, and Cash'r D. C. Sav. Asso.

(On the margin:) Note this entry.

140 Rec'd satisfaction in full of the within mortgage or deed of trust May 14, '77.
R. L. TOMLIN, *Cashier.*

One dated M'ch 19th, '74; Sparrow to bank, $480, p. 111.

Rec'd sat. in full of within deed of trust this 3' day of March, 1875.
R. L. TOMLIN,
Trustee and Cash'r D. Co. Sav. Asso.

One dated Ap'l 7, '74; Spahr to bank, $324.50, p. 119.

Rec'd sat. in full of within deed of trust May 17, '75.
R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

One dated May 11, '74; Hammond to bank, $375, p. 127.

Rec'd full sat. Nov. 18, '75.
R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

One dated April 1, '74; Werner to bank, $1,026.85, p. 128.
Rec'd sat. in full Dec. 12, '74.
R. L. TOMLIN,
Cash'r D. Co. S. A.

One dated May 22, '74; Cochran to bank, $350, p. 129.
Rec'd sat. in full Dec. 21, 74.
R. L. TOMLIN,
Trustee and Cash'r D. Co. S. A.

One dated July 18, '74; Roberts to bank, $1,240.00, p. 141.

Rec'd sat. in full on within mortgage Jan'ry 12, '75.
R. L. TOMLIN,
Cash'r D. Co. S. A.

One dated Apr. 7, '74; Bacon to bank, $215, p. 143.

Rec'd sat. in full of the annexed deed by payment of the notes therein described, Dec. 3, '79.

R. L. TOMLIN,
Cash'r D. Co. S. A.

141 One dated Aug. 20, '74; McGee to bank, $400, p. 148.

Rec'd full sat. of the within deed Ap. 17, '72.
R. L. TOMLIN, *Cashier.*

One dated Dec. 11, '74; Werner to bank, $681, p. 164.

Rec'd full satisfaction of annexed deed Oct. 27, '76.
R. L. TOMLIN,
Trustee for D. C. S. A.

One dated Jan'y 30, '75; Tolen to bank, $121.25, p. 172.

The annexed trust-deed is satisfied in full by payment of M'ch 2, 1880, the note herein described.

R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Dec. 24, '74; Thompson to bank, $100, p. 174.

Rec'd sat. in full of this trust-deed July 21, '75.
R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

One dated Feb'y 8th, '75; McMurty to bank, $299.35, p. 177.

Rec'd full sat. Oct. 20, '75.

R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Feb'y 1, '75; Warford to bank, $400, p. 179.

Rec'd sat. in full of annexed deed July 13th, '76.
R. L. TOMLIN,
Trustee and Cashier D. Co. S. A.

One dated Feb'y 13, '75; Cochran to bank, $147.75, p. 180.

Rec'd full sat. Ap'l 17, '77.

R. L. TOMLIN,
Cash'r D. Co. S. A.

One dated Feb'y 13, '75; Snyder to bank, $200, p. 181.

Rec'd full satisfaction Feb. 19, '76.

R. L. TOMLIN,
Trustee and Cashier D. C. S. A.

One dated Feb'y 13, '75; Briggs to bank, $98.65, p. 182.

142 For value received, the Davis County Savings Association assignes the annexed deed of trust to Wm. E. Gunby, without recourse on it, June 12, '75.

R. L. TOMLIN, *Cashier.*

(On the margin:) Note this entry.

I hereby acknowledge satisfaction in full on the within trust-deed July 19, '75.

W. E. GUNBY.

One dated Feb'y 16th, '75; Love to bank, $100, p. 163.

Rec'd sat. by payment of notes therein described, M'ch 20, '78.

R. L. TOMLIN,
Cash'r D. Co. S. A.

One dated Feb'y 20, '75; Rowell to bank, $200, p. 185.

Satisfied by payment of note subscribed Nov. 14, '79.

R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Dec. 26, '74; Whett to Gillihan, $140, p. 186.

Rec'd full sat. of within deed Dec. 23, '75.

R. L. TOMLIN,
Cashier, Assignee.

One dated Dec. 26, '74; Wirt to bank, $4,000.00, p. 187.

Rec'd full sat. of annexed deed of trust Nov. 2nd, '75.

R. L. TOMLIN,
Cashier D. C. S. A.

One dated Dec. 26, '74; Wirt to bank, $4,000.00, p. 188.

Rec'd full satisfaction of the annexed deed Nov. 22, '75.

R. L. TOMLIN,
Cashier D. C. S. A.

One dated Jan'ry 2, '75; Rookstove to bank, $300, p. 190.

Rec'd full satisfaction of the annexed deed of trust Dec. 20, '75.

R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Jan'y 11, '74; Ferrill to bank, $250, p. 192.

143 Rec'd full satisfaction of annexed deed Dec. 29, '75.

R. L. TOMLIN,
Cashier D. C. S. A.

One dated Jan'ry 5, '75; Dilly to bank, $420, p. 194.

Rec'd full satisfaction of annexed deed Feb'y 3, '76.
R. L. TOMLIN,
Cashier D. C. S. A.

One dated Sept. 26, '74; Keene to bank, $90.75, p. 202.

Rec'd full satisfaction of the annexed deed of trust Jan'y 29, '77.
R. L. TOMLIN,
Cashier D. C. S. A.

One dated Oct. 22, '74; Drake to bank, $236, p. 203.

Satisfied in full by payment of the note to be paid in the annexed mortgage Sept. 6, '78.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Oct. 29, '74; Buzzard to Brown, $456.75, p. 205.

Satisfied by payment of all the notes herein described Dec. 11, '80.
R. L. TOMLIN,
Cashier D. C. Sav. Asso., Assignee and Legal Owner of said Notes, 6 in all.

One dated Nov. 30, '74; Sandals to bank, $200, p. 211.

Received full satisfaction of the annexed deed Jan'ry 30, '72.
R. L. TOMLIN,
Cashier Davis Co. S. Asso.

One dated Dec. 22, '74; Mutant to bank, $225.00, p. 212.

Received full satisfaction Dec. 29, '75.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Dec. 19, '74; Cole to bank, $716.60, p. 213.

144 Rec'd satisfaction in full Aug. 27, '75.
R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

One dated Feb'y 26, '75; Ethington to bank, $88.87, p. 216.

Rec'd satisfaction in full of the annexed deed Nov. 24, '75.
R. L. TOMLIN,
Cashier D. C. S. A.

One dated Feb'y 24, '75; Statwirs to bank, $295, p. 222.

Rec'd satisfaction in full of the annexed deed Jan'y 14, '77.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Feb'y 27, '75; Sandals to bank, $150, p. 223.

Rec'd full satisfaction of the annexed deed Oct. 26, '76.

R. L. TOMLIN,
Cash'r Daviess Co. Sav. Asso.

One dated M'ch 4, 1875; Pritchard to bank, $190.45, p. 225.

Rec'd sat. of annexed deed Aug. 28, '79.

One dated March 4, '75; Shirley to bank, $98, p. 226.

Received sat. in full of annexed deed March 27, '78.

R. L. TOMLIN,
Cashier D. C. S. A.

One dated M'ch 17, '75; Martin to bank, $560, p. 228.

The annexed trust-deed is satisfied in full by payment of the notes therein described this April 24, '79.

R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Mc'h 2, '75; Roberts to bank, $1,856.00, p. 229.

In consideration of a credit on the note which the annexed deed secures, I hereby release the NW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, sec. 28, twp. 60, R. 28, in said deed of trust.

R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

(On the margin:) Note this entry.

One dated Dec. 22, 1874; Graham to bank, $595.60, p. 231.

Rec'd satisfaction of the annexed deed Sept. 26, '77.

R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

145 One dated M'ch 10, 1875; Daner to bank, $50, p. 232.

Rec'd full satisfaction of the annexed deed Dec. 14, '75.

R. L. TOMLIN,
Cash'r D. C. S. A.

One dated M'ch 17, '75; Deerdoff to bank, $180, p. 236.

Rec'd full sat. of annexed deed by payment of the note which it secures May 17, '77.

R. L. TOMLIN,
Cash'r & Trustee.

One dated Apr. 2d, '75; Bull to bank, $82.50, p. 246.

Rec'd full satisfaction of the annexed deed of trust Sept. 25, '75.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated June 3, '75; Campbell to bank, $90.25, p. 262.

Rec'd full sat. of the annexed deed Feb'y 23, '77.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated June 12, '75; Ross to bank, $1,000.00, p. 268.

This deed satisfied by the payment of the note therein described Feb'y 18, '79.
R. L. TOMLIN,
Cashier.

One dated July 15, '75; Fisher to bank, $264, p. 286.

Rec'd full satisfaction of the annexed deed Jan'y 25, '76.
R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

One dated Aug. 21, '75; Cole to bank, $513.75, p. 294.

Rec'd full satisfaction of the annexed deed Dec. 29, '75.
R. L. TOMLIN,
Cash'r D. C. S. A. & Trustee.

One dated Sept. 6th, '75; Hughes to bank, $491.50, p. 297.

Rec'd satisfaction in full of the annexed deed Dec. 21st, '77.
R. L. TOMLIN,
Cash'r D. C. S. A.

146 One dated Feb'y 27, '75; Vance to bank, $120, p. 301.

Rec'd full satisfaction of the annexed deed Aug. 22, '76.
R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

One dated Nov. 12, '75; Johnson to bank, $158.15, p. 314.

The annexed deed of trust is this day satisfied by other security being given by Levi Johnson to secure the debt therein described. July 23, 1876.
R. L. TOMLIN,
Cashier Davis Co. Sav. Asso.

(On the margin:) Note this entry.

One dated Nov. 15, '75; Wirt to bank, $3,777.43, p. 320.

Rec'd satisfaction of the within deed of trust Apr. 17, '77.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Jan'y 3, '76; Johnson to bank, $166.76, p. 328.

Rec'd satisfaction in full of the annexed deed Apr. 5, '76.
R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

One dated Dec. 25, '75; Stean to bank, $261, p. 333.

Rec'd satisfaction of the annexed deed Feb'y 17th, '79.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Oct. 26, '75; Andrews to bank, $226, p. 337.

Rec'd satisfaction of the annexed deed by payment in full.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Dec. 10, '75; Danner to bank, $72.

Rec'd sat. in full M'ch 28, '77.
R. L. TOMLIN,
Cash'r D. C. S. A. & Trustee.

147 One dated Dec. 27, '75; Schnyhart to bank, $218, p. 340.

Rec'd sat. in full of the annexed deed Aug. 16th, '79.
R. L. TOMLIN, *Cash'r.*

One dated Dec. 15, '75; Montgomery to bank, $637.77, p. 341.

Rec'd full satisfaction of the annexed deed May 9, '77.
R. L. TOMLIN,
Trustee & Cash'r D. C. S. A.

One dated Jan'y 25, '76; Clater to bank, $33, p. 347.

The note secured by annexed deed paid in full Nov. 12, '78.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Jan. 28, '76; Hines to bank, $134, p. 350.

Rec'd satisfaction in full of this deed.
R. L. TOMLIN,
Trustee D. C. S. A.

One dated Feb'y 5, '76; Higgins to bank, $464.20, p. 352.

Rec'd full sat. of annexed deed July 30, '77.
R. L. TOMLIN,
Trustee and Cash'r D. C. S. A.

One dated Feb'y 14, '76; Hall to bank, $50, p. 353.

Rec'd sat. in full of annexed deed.
R. L. TOMLIN,
Trustee & Cash'r D. C. S. A.

One dated Feb'y 16, '76; Cole to bank, $1,082.00, p. 354.

Except as to the NW. ¼ of the SE. ¼ of sec. 34, twp. 61, R. 27, this trust deed is hereby satisfied in full this Aug. 16, 1879.
R. L. TOMLIN,
Cash'r D. C. S. A.

(On margin:) Note this entry.

One dated M'ch 3d, '76; Wirt to bank, $800.00, p. 367.

148 Rec'd sat. of the annexed deed this Ap'l 25, '77.
R. L. TOMLIN,
Trustee & Cashier D. C. S. A.

One dated M'ch 18, '76; Phelps to bank, $225, p. 379.

Rec'd full satisfaction of the annexed deed this 28th of Feb'y, '77.
R. L. TOMLIN,
Cash'r, D. C. S. A.

One dated Apr. 10, '76; Whitten to bank, $768.00, p. 384.

Rec'd sat. in full of annexed deed, Jan'y 3, '77.
R. L. TOMLIN,
Trust. & Cash'r, D. C. S. A.

One dated Apr. 12, '78; Conover to bank, $100, p. 385.

Rec'd full satisfaction of annexed trust-deed Aug. 20, '79.
R. L. TOMLIN,
Trus. & Cashier, D. C. S. A.

One dated Apr. 22, '75; Wirt to bank, $3,777.73, p. 391.

Rec'd satisfaction of the annexed deed Apr. 17, '77.
R. L. TOMLIN,
Cash'r, D. C. S. A.

One dated May 12, '76; Roberts to bank, $58, p. 398.

The annexed deed of trust is satisfied in full, Dec. 9th, '79.
R. L. TOMLIN, *Cashier.*

One dated June 1, '76; Briggs to bank, $93.95, p. 406.

Rec'd full satisfaction of the within deed of trust, Feb'y 8th, '77.
R. L. TOMLIN, *Cashier.*

One dated Sept. 23, '76; Brown to bank, $720.75, p. 430.

Rec'd satisfaction of the annexed deed 30 of Nov., '77.
R. L. TOMLIN,
Cash'r, D. C. S. A.

One dated Nov. 8, '76; Fuller to bank, $128, p. 439.

149 The annexed trust-deed is satisfied by paym't of note therein described Mc'h 20, '80.
R. L. TOMLIN, *Cash'r.*

One dated Oct. 9, '76; Westen to bank, $449, p. 441.

Rec'd sat. on the within deed of trust this 13' day of Nov., 1877.
R. L. TOMLIN,
Cash., D. C. S. A.

One dated Oct. 18, '76; Wright to bank, $25.15, p. 447.

Rec'd sat. of annexed deed Feb'y 23, '77.
R. L. TOMLIN,
Cash'r, D. C. S. A.

One dated Oct. 28, '76; Ford to bank, $70.80, p. 449.

Satisfied * * * by payment Dec. 1st, '80.
R. L. TOMLIN,
Cash'r, D. C. S. A.

One dated Jan'y 22, '77; Ward to bank, $722.45, p. 470.

Rec'd paym't in full * * * Jan'ry 12, '78.
R. L. TOMLIN,
Cash'r, D. C. S. A.

One dated Jan'ry 13, '77; Sandals to bank, $455, p. 478.

Rec'd sat. in full * * * Jan'y 22, '80.
R. L. TOMLIN,
Cashier, D. C. S. A.

One dated Feb'y 23, '77; Lindsey to bank, $226.10.

Rec'd sat. in full * * * Aug. 2, '78.
R. L. TOMLIN,
Cash'r, D. C. S. A.

One dated M'ch 1st, '77; Phelps to bank, $355.25.

Rec'd sat. in full of annexed deed * * * Jan'y 19th, '78.
R. L. TOMLIN,
Trus. & Cash'r, D. C. S. A.

One dated M'ch 13, '77; Henderson to bank, $500, p. 496.

Rec'd full satisfaction of debt mentioned in said deed Jan'y 12, '78.
R. L. TOMLIN,
Cash'r, D. C. S. A.

150 One dated M'ch, '77; Rowland to bank, $650.00.

The annexed deed satisfied by payment * * * Apr. 20, 1880.
R. L. TOMLIN, *Cashier.*

One dated Apr. 5, '77; Hamilton to bank, $340, p. 570.

The annexed deed of trust is satisfied by paym't of the note * * * June 17, 1880.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated M'ch 19, '77; Carter to bank, $400, p. 511.

* * * Satisfied by payment * * * Jan'y 6, 1880.
R. L. TOMLIN, *Cash'r.*

One dated Feb'y 20, '77; Wirt to bank, $476, p. 517.

Rec'd satisfaction * * * this 20 day of Sept., '77.
R. L. TOMLIN,
Cash. D. C. S. A.

One dated May 13th, '77; Walker to bank, $707, p. 532.

Rec'd sat. in full * * * July 6, '78.
R. L. TOMLIN, *Cash'r.*

One dated Sept. 3, '77; Martin to Jackson, $600, p. 562.

Rec'd full satisfaction * * * Dec. 3, '77.
R. L. TOMLIN,
Cash'r D. C. S. A., Assignee.

One dated Sept. 19, '77; Wirt to bank, $500.

Satisfied by payment M'ch 6th, '80.
R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Oct. 29, '77; Day to bank, $145.

Received payment * * * Dec. 22, '79.

R. L. TOMLIN,
Cash. D. C. S. A.

One dated Nov. 27, '77; Davis to bank, $812.50, 587.

Received full satisfaction * * *

R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Nov. 20, '77; Scott to bank, $200, p. 589.

Rec'd satisfaction by full paym't * * * Sept. 11, '79.

R. L. TOMLIN, *Cashier.*

One dated Nov. 30, '77; Brown to bank, $500, p. 590.

151 Rec'd full satisfaction of the annexed deed of trust Dec. 11, '78.

R. L. TOMLIN,
Cash'r D. C. S. A.

One dated Feb'y 6, '78; Huster to bank, $100, p. 623.

Rec'd satisfaction * * * Nov. 4, '79.

R. L. TOMLIN,
Cashier & Trustee.

One dated March 6, '78; Brown to bank, $905.50, p. 628.

Satisfied in full * * * June 23, '80.

R. L. TOMLIN,
Cash'r D. C. S. A.

Cross-examination:

I knew Darrow before August, 1879. He has been in my office two or three times during the time I have been in office; don't know whether he examined the record or not.

Tomlin never produced a power of att'y or other authority from the bank to make said entries of satisfaction.

I have had full power and control of the recorder's office for 6 years.

V.

BENTON MILLER testified:

I am 42 years old; am a merchant; have resided in Gallatin for 17 years; my place of business is next door to bank (D. C. S. A.).

R. L. Tomlin has been cashier of the bank for eight years; I have been in the bank once, twice, or 3 times a day; sometimes skipped a day.

McFerran was pres't of the bank from '73 to '79, and during that time has resided in the State of Colorado.

From 1873 down to 1879 Tomlin seemed to have charge of the money of the bank.

He took me occasionally as security; can't say about others.

152 So far as I could see, Mr. Tomlin had the general management and control of the bank.

Cross-examination:

There was a directory for the bank at the time.

I knew this because I saw it advertised in the town papers, containing notices of annual and semi-annual meetings. I don't know what action the directors of the bank had, or what control they took of the bank or its assets.

VI.

WM. C. GILLIHAN testified:

My age is 40; I am a lawyer; have lived in Gallatin for 20 years. McFerran has been pres't of the bank (D. C. S. A.), since its organization in 1865 to 1869. Tomlin has been cashier some eight or nine years, when he went out in Jan'y, 1881. I have understood all the time there were directors of the bank.

My firm has done business for the bank. I was very well acquainted with the inside workings of the bank, though I was never present at any of its meetings or an election of its officers. McDougal, Dr. Givens, James Hemry, and John A. Tuggle, have been directors off and on from its organization. Hemry has resided most of the time for the last 4 or 5 years in Caldwell County.

Tuggle lives some 8 or 9 miles from this town. McDougal and Givens live in town.

And from the election of officers and their semi-annual meetings I don't know of the directors ever attending to any other business.

I don't know what they met for, except for the election of officers.

Don't know of the directors ever transacting any other business than the election of officers.

153 During the months of July and Aug., '79, John A. Tuggle was farming, and was also judge of the county court. Hemry had a great deal of monied interests of his own to look after *that* during that time and prior. McDougal was practicing law at Gallatin and Trenton; he was here about half of the time; he had an office in Trenton.

McFerran lived in Colorado Springs from 1873. Would visit this place once a year and remain a week or 10 days. From 1873 to the last of August, 1879, Tomlin was in charge of the bank; had control of it, handling its funds, making its contracts, taking and cancelling its deeds of trust and mortgages, and transacting in general all business which might come up and in which it might be engaged or concerned. I know of no one else but Tomlin. My impression is, that McFerran's visits were on business connected with the bank. He asked me at one time about the bank and how it was running.

From the time he left here in '73 to the last of Aug., '79, I do not know of him participating in or conducting any of the business of the bank.

During this time I remember a case when Tomlin released the lands of

Wirt or a part of them from a deed of trust, when the debt secured by such deed was not paid.

This trust-deed is recorded in book H. There are two or three instances of the same kind in the same book. I remember a case where the bank held a deed of trust Preston and Hamlin, or one of them, which was satisfied and released by taking a new deed of trust; the first one was satisfied by taking a new deed, and that one was satisfied by still taking a third.

There are about one hundred deeds in book H that have been cancelled by Tomlin.

I now refer to other books in the records of Daviess Co., Mo., and will give an abstract of cancellations which I will attach to my deposition and mark the same "Exhibit A." (The exhibit contains a description of about fifty trust-deeds as recorded in books A and F, all of which
154 are marked "Satisfied by Tomlin." Said satisfactions running through years '73, '4, '5, '6, '7, '8, '9, and 1880 inclusive. This exhibit is of the same nature generally as that abstracted from Abell's deposition and is here referred to and made a part hereof without copying.)

Among said satisfactions is the following:

On page 165, book A, Briggs to bank, dated Aug. 12, 1879. Am't, $262.20.

The annexed trust-deed is satisfied as to lots 1, 2, & 3, in block 28, therein described, on payment by John Sutton of $75.00, June 26, 1880.

R. L. TOMLIN,
Cashier Daviess Co. Sav. Asso.

(On the margin:) Note this entry.

This trust-deed is satisfied as to lots 6 & 7, in block 27, therein named, on payment by H. Briggs of $25.00, Aug. 16th, 1880.

R. L. TOMLIN,
Cashier Daviess Co. Sav. Asso.

PATRICK KENNEY was indebted to the bank in about $40,000.00; a truthful statement of his indebtedness appears in the petition herein. I would consider him insolvent at the time the loan was made and he is insolvent now.

As to what the bank did in applying for this loan, Pr. Kenney would say: About June or July, 1879, Mr. Tomlin came to me to know if he could effect a loan of Frank & Darrow, of Corning, Iowa, for $10,000.00. I told him we were not agents for Caldwell County, but would write to F. & D. about the matter, and he had better write also. I learned from him that he did. He gave as a reason for wanting the money that there was two or three liens on the land that he wanted to get nearer home and consolidate into one deed of trust.

One in particular to Mr. Powers, a priest in St. Joe, Mo., who was away from home, and he did not know when it would sell. He wanted
155 to get them into one deed of trust, as Kenney's wife had not signed some of the deeds the bank held.

I think he said at that time that to pay off all the liens that were prior to the bank liens would take more money than the bank could easily at that time spare, and by making the loan he could have considerable more money than would pay off the liens to use in the bank.

I had, I think, two conversations with Tomlin about the matter; I have given the substance of both. Mr. Brossius was the more active in talking the matter up.

Application was made to F. & D., on the suggestion of Tomlin, and Darrow brought the money here, and he and Tomlin went to Caldwell County and closed the loan to Mr. Kenney; that the way the papers read.

Tomlin told me he was present at the time the money was paid over, and that he received about $3,500.00 or $3,600.00 after the liens were all paid off.

I understood that he received 35 or 3,600.00 as cashier of the bank. Mr. Tomlin was to satisfy all the deeds held by the bank on Kenney's land, so that after paying the prior liens the plaintiffs would have a first lien on Kenney's farm.

I don't think I ever heard of any question being raised by the bank as Tomlin's right to cancel any of the deeds of trust in book H referred to.

Just before the bank (D. C. S. A.) advertised the land for sale Mr. Tomlin came to me with a written refusal to act as trustee in one of the deeds of trust against Kenney and in favor of the bank, in Mr. Holliday's handwriting, and requested me to sign it. This was one of the old deeds of trust. I told him I thought the deed had been satisfied, and he said yes, but the bank officers thought not and were going to sell it, and we signed. This was the first I had ever heard of his authority being questioned to satisfy the deeds of trust. I think Tomlin came to me
156 and asked me if I knew what book the Saylor case was reported in. I said no, but I could find it. I did, and gave it to him. This was about the time of the meeting of the directors after the loan, Feb'y, 1880.

Cross-examination:

When Tomlin applied to me for the loan from F. & D. he stated that Kenney would make the application.

In what I have stated I have given what Tomlin said; don't think any one else ever said anything to me about it.

When Tomlin came for the Saylor case he did not state what he wanted with it.

The deeds of trust that are referred to by me as being in book H are all satisfied by Mr. Tomlin as cashier of the Daviess Co. Sav. Asso.

He had no power of att'y or other authority of record to enter such satisfactions that I know of.

I never saw the directors exercise any control over the business and affairs of the bank.

Think Tomlin has told me he had received letters from McFerran in relation to the affairs of the bank.

I remember also of McFerran asking me, as I stated heretofore, about the bank business; also of his taking charge of the bank business when here on visits. I had seen Tomlin's entries of satisfaction on the records both before and since the injunction was granted herein.

My knowledge of the entries in book H grows out of reading and examining them, and occasionally, in cases where I was interested, I have seen him satisfy them.

VII.

SAMUEL T. BROSSIUS testified:

My age is 33; am a lawyer; have resided in Gallatin 31 years; have known the bank (D. C. S. A.) ever since its organization. Tomlin has been cashier for 7 or 8 years.

157 All the officers of the bank that I know anything about is McFerran, pres't. During that time until this year Hemry has been pres't. In summer of '73 McFerran, the president, went to Colorado Springs, in Colorado, and has resided there ever since.

During the time since he has been here at least once a year, and sometimes oftener, not exceeding two or three times a year.

Stayed from 2 days to 2 weeks.

Until within the last six months I have been in the bank almost every business day during the past seven years, and sometimes five or 6 times a day. Robert L. Tomlin has had the charge and control of the monied affairs of the bank almost exclusively during that time.

Robert L. Tomlin has taken and released its securities all that time.

I never saw any one else release one, but I think I have seen a trust-deed or two that had been released by McFerran. I have superintended the satisfaction of a number of trust-deeds, from 50 to 100, in which the bank was interested, and Robert L. Tomlin, as cashier of the Daviess Co. Sav. Asso., in every instance entered satisfaction.

I have known Robert L. Tomlin in several instances to release trust-deeds where only part of the debt they secured was paid, and allow other parties to take a first lien, he then filing a second deed of trust in favor of the Daviess Co. Sav. Ass., or taking personal security for the unpaid balance.

From the year 1873 up to the time Mr. Tomlin left the bank I never knew or heard of any other person or officer acting or assuming to act for the bank (except as stated above) releasing or satisfying deeds of trust and mortgages, controlling or handling the assetts of said bank, or having anything to do or say in relation to the business of the

158 bank or the release or transfer of its securities.

In May or June, 1879, Mr. P. S. Kenney, at Tomlin's request, made application to Geo. W. Frank & Darrow for a loan of $10,000.00, to be secured by a deed of trust on Mr. Kenney's farm in Caldwell Co., Mo.

Mr. Tomlin agreed to pay off all incumbrances then existing, other than the debts due the bank (D. C. S. A.), and allow Frank & Darrow to have a first lien in favor of parties loaning money through them on said farm of said Kenney, and that the Daviess Co. Sav. Asso. would take a second deed of trust for the balance of their debt not paid by the proceeds of said loan, and it was in pursuance of the above agreement that Mr. Darrow, of the firm of Frank & Darrow, visited Mr. Kenney, where we (Mr. Tomlin and myself) met at Kidder, near Kenney's home. We all visited Kenney's farm to satisfy Mr. Darrow as to the security of the loan, and Mr. Darrow being satisfied that the farm was ample security for $10,000.00 agreed to make the loan to Kenney but the express agreement was that the loan was for the accom'odation of the Daviess Co. Sav. Asso. and that it would father the loan; and while it was not expressed that the Daviess Co. Asso. would guarantee the loan, it was understood that it would do so.

159 Mr. Tomlin suggested to me that the bank would allow Darrow to sell the farm under the $10,000.00 trust unless Mr. Kenney kept the interest paid, and the bank would buy the farm.

Tomlin gave as his reason for making the above arrangement that the bank needed some money. That Kenney could not pay it any in any other way, and that by so doing the bank could not lose anything except the expenses of obtaining the loan.

Cross-examination:

When I said that Tomlin released the securities of the bank, I have special reference to deeds of trust and mortgages, but generally to all securities held by the bank. I never knew him to release a security unless part of the debt or all of it was paid.

The loan was not made at the time that Darrow visited the farm for the purpose of inspecting it, but was made a few days afterwards.

I was not present when the loan was actually made.

I don't know anything about the directors of the bank except by the card of the bank published in the county papers.

I was never present at the meeting of the directors that I remember of.

VIII.

THOMAS J. BROWN testified:

My age is 48; reside in Gallatin, Mo.; am a farmer and dealer in real estate. Have lived in Gallatin 16 years. Have known the bank (D. C. S. A.) since its organization.

Tomlin has been cashier since '71 or '72, till Jan'ry, 1881.

Since Tomlin has been in the bank I have had a great many transactions with the bank.

Have been in the bank several times during each week for the
160 last 6 or 7 years, sometimes not more than once a month, but the bank was a common place of resort for me, and my relations with Mr. Tomlin were rather intimate. I was not intimate with the president and directors.

All the transactions I have had with the bank have been with Tomlin.

My business was in giving notes, deeds of trust, and other securities, and the satisfaction and release of the same. With one or two exceptions Tomlin, the cashier, on payment or satisfaction of notes secured by trust-deeds, entered satisfaction on the proper records. Early in my transactions, in one or two instances, I secured to the releases the signatures of R. L. Tomlin, as cashier, and Col. McFerran, as president, in the nature of a quit-claim deed.

It was the custom and practice of the cashier, Tomlin, for the past seven years, to satisfy all deeds of trust and other securities paid by me for myself and my brother-in-law, W. E. Wirt, whose business I transacted during his absence.

Witness is here shown record H of the records of trust-deeds of Daviess County, and his attention is called to page 10 thereof.

I recognize the deed on page 10 as being a deed of trust given by W. E. Wirt and wife to bank (D. C. S. A.).

I find several entries on the deed in my handwriting; my recollection

is that the whole debt secured by this deed of trust was not paid at one time. There being five entries of satisfaction on the margin, as a piece of land would be sold the proceeds would be applied on the debt, and entry of satisfaction as to land sold would be signed by R. L. Tomlin, cashier, and trustee.

From Jan'y, '73, till Jan'y, 1881, never heard of any objections being made by the directors or any other officer of the bank to Tomlin's releasing or satisfying securities.

Never knew of the directors doing anything, or release of securities held by the bank.

161 As far as I ever knew Tomlin has held charge and control of all business connected with the bank from 1873 to Jan'y, 1881.

The directors were John A. Tuggle, James Hemry, H. C. McDougal—a year or two; Wm. H. Givens was for several years a director, but has not been for a year or two past.

I think Mr. Tomlin was also a director, as well as cashier.

Tuggle lived 10 or 12 miles from this place, and is a farmer.

Hemry lives near the line between Daviess and Caldwell Counties, and was a money loaner.

McDougal lived in Gallatin, and practised law.

Givens lived in Gallatin, and practised medicine.

Never knew of these directors taking any interest in the conduct of the affairs of the bank, except at their annual meetings.

From the summer of '73 to Jan'y, '81, have not known any other person or officer of the bank than Mr. Tomlin releasing or satisfying liens or securities held by the bank, except in the two instances above referred to.

McFerran has resided in Colorado Springs, and has visited this place about once a year since 1873.

IX.

JEFF DAVIS testified:

My age is 27; reside in Kingston; I am a lawyer.

Yes, sir. I have examined the records of trust-deeds in Caldwell County, Mo., and I find therein as follows: 1st. On page 84, book K, trust-deed dated Feb'y 8, '72, filed for record Feb'y 10, '72, given by P. S. Kenney & wife to M. A. Low, trustee for Leslie P. Barnum, and conveys SE. ¼ of sec. 3, & the NW. ¼ of NE. ¼ & N. ½ NW. ¼ of sec. 10, and NE. ¼ NE. ¼ of sec. 9, township 57, R. 29, in Caldwell Co., Mo., containing 320 acres, more or less. Am't secured thereby $3,000.00, with interest at 10 per cent. from date; if not paid annually to become as principal and bear interest.

162

On the margin is the following:

I hereby acknowledge satisfaction of the debt and interest secured by this deed of trust, Aug. 6th, '79.

R. L. TOMLIN,
Cashier D. C. S. A., Assignee of Leslie P. Barnum.

Attested: * * * by recorder.

2nd. On page 3 of book K is trust deed, dated Nov. 17, '73, filed Nov.

17, '73, at 3 o'clock p. m., given by P. S. Kenney to C. S. McLaughlin, trustee for Solomon Musser, and conveys E. ½ NW. ¼ and W. ½ NE. ¼, all in sec. 9, and S. ½ of sec. 4, all in township 57, R. 29, Caldwell Co., Mo.

Given to secure sum of $2,112.52; no rate of interest specified.

On the margin is the following:

I hereby acknowledge full satisfaction of the debt and interest secured by this trust-deed, this Aug. 6, '79.

R. L. TOMLIN,
Cash'r D. C. S. A., Assignee of Solomon Musser.

Attested: * * * by recorder.

3rd. On page 15, book K, is trust-deed, dated Dec. 20, '73, filed Jan'y 8, '74, at one o'clock p. m., given by P. S. Kenney and wife to John Doolan, trustee for Nicholas Quirk, and conveys SE. ¼ sec. 3, & E. ½ NE. ¼, sec. 10, in township 57, R. 29, Caldwell Co., Mo. Am't secured $1,650. Interest at 10 per cent. (compounded if not paid annually).

On margin of record is the following:

I hereby acknowledge full satisfaction of the debt and interest secured by this deed of trust, this Aug. 6th, 1879.

R. L. TOMLIN,
163 *Cash'r D. C. S. A., Assignee of N. Quirk.*

Duly attested.

4. On page 67 of book K is trust-deed, dated Aug. 28, '74, filed Sept. 3, '74, at 9.30 a. m., given by P. S. Kenney and wife to R. L. Tomlin, trustee for Daviess Co. Sav. Asso., and conveys S. ½ sec. 3 & S. ½ sec. 4, all in township 57, R. 29, in Caldwell Co., Mo., containing 640 acres.

Am't secured $5,036.80; interest 10 per cent. from maturity. The note secured bears date Aug. 28, '74, due 12 months from date.

On the margin is the following:

I hereby acknowledge full satisfaction of the debt and interest secured by this trust-deed, this Aug. 6, 1879.

R. L. TOMLIN,
Cash'r D. C. S. A.

Duly attested.

5. On page 161 book K is trust-deed, dated May 24, '75, filed May 29, '75, at 10.40 a. m., given by P. S. Kenney to R. L. Tomlin, trustee for D. C. S. A., and conveys S. ½ sec. 4, E. ½ sec. 9, E. ½ NW. ¼ sec. 9; also N. ½ sec. 10; also NE. ¼ NW. ¼ sec. 10, all in twp. 57, R. 29, Caldwell Co., Mo., containing 1,080 acres more or less.

Am't secured $8,013.13, with interest at 10 per cent. from maturity. The note is dated May 24, '75, and falls due Nov. 24, '75.

On the margin is the following:

I hereby acknowledge full satisfaction of the debt and interest secured by this deed of trust, this Aug. 6th, 1879.

R. L. TOMLIN,
Cashier D. C. S. A.

Duly attested.

6. On page 74 book K is deed of trust, dated Sept. 29, '74, filed Oct. 2, '74, at 11.40 a. m., given by P. S. Kenney & wife to R. L. Tomlin, trustee for D. C. S. A.; conveys N. ½ sec. 10 & the N. ½ sec 4, all in township 57, range 29, Caldwell Co., Mo., containing 640 acres. The am't secured is $5,792.20. Two promissory notes dated Aug. 28, '74, the first due Oct. 10, '74, for $755.40, with 10 per cent. interest from maturity the second due 12 months after date for $5,036.80, with 10 per cent. interest from maturity.

164

On the margin is the following:

I hereby acknowledge full satisfaction of this deed of trust, this Aug. 6, '79.

R. L. TOMLIN,
Cashier D. C. S. A.

Duly attested.

7. On page 212 of book K is deed of trust, dated Apr. 1st, '76, filed Apr. 13, '76, at 3.30 p. m., given by P. S. Kenney & wife to Wm. C. Gillihan and Saml. T. Brossius, trustees for D. C. S. A., and conveys S. ½ sec. 3, S. ½ sec. 4, & N. ½ NE. ¼, & SW. ¼ NE ¼, & E. ½ NW. ¼ sec. 9, & E. ½ NE. ¼, & NW. ¼ of NE ¼, & N. ½ NW. ¼ sec. 10, all in township 57, range 29, Caldwell Co., Mo., containing in all 1,055 $\frac{7}{100}$ acres.

Also the S. ½ NW. ¼ & SW. ¼ NE. ¼ sec. 10, and NW. ¼ SE. ¼ sec. 9, all in township 57, range 29, Caldwell Co., Mo., containing in all 1,217 $\frac{7}{100}$ acres. Am't secured $4,889.65.

Two notes dated Apr. 1, '65; first one due Sept. 1st. '76, for $2,444.83, 10 per cent. interest from maturity; the second note due Jan'y 1st, 1872, for $2,444.83, with 10 per cent. interest from maturity.

On the margin is the following:

I hereby acknowledge full satisfaction of the debt and interest secured by this deed of trust, this Aug. 6, 1879.

R. L. TOMLIN,
Cash'r D. C. S. A.

Duly attested.

8. On page 183 in book G is trust-deed, dated Feb'y 26, ,73, filed March 6, '73, at 10 a. m., given by P. S. Kenney and wife to Thomas Culligan, trustee for James D. Power, and conveys S. half of sec. 3; also E. half SE. quarter sec. 4, containing 402 acres, all in township 57, R. 29, Caldwell Co., Mo. Am't secured $5,000.00, evidenced by one promissory note of even date with deed of trust, bearing interest at the rate of 10 per cent. per annum. Interest to be compounded if not paid annually.

165

On margin is the following:

For deed of release see record No. 10, page 30.

(A certified copy of release is attached to deposition, which is made part hereof without abstracting at length.)

I have carefully examined records of circuit court of Caldwell Co., Mo., and find therein two judgments against P. S. Kenney et al. The first is

on pp. 59 & 60, record G, date July 5, '75. Am't $515.45, with 10 per cent. interest from date. The second is on p. 60, record G, date July 5, '75. Am't $614.50. Bears interest at 10 per cent. from date.

On the margin of said record is the following:

The two within judg'ts are entitled to a credit of $990.00, Apr. 25, '79.

SAM'L RUSSELL,
Pres't Ex. Bank.

Attest by clerk.

And further:

Rec'd of Winfield Miller, circuit clerk, $623.13, in full paym't of these judg'ts, Aug. 13th, '79.

SAM'L RUSSELL,
Pres't Ex. Bank.

Also in book G, p. 159, of said circuit court record, I find judg't in favor of Thos. Ryan against P. S. Kenney, which judg't was rendered Nov. 1st, '75. Am't $775; interest at 10 per cent. from date.

On margin I find the following:

I, Winfield Miller, clerk of the circuit court, acknowledge the receipt of $1,066.00 as payment in full of this judg't, this 6' day of Aug., 1879.

166 WINFIELD MILLER, *Clerk.*

Received of Winfield Miller, clerk, the sum of $1,066 in full of this judgment, Aug. 8th, 1879.

THOS. RYAN,
By LOW & DILLY,
His Att'ys.

Attest by clerk.

I was present in the clerk's office when said judgments were paid and when the deeds of trust heretofore referred to were cancelled.

Lew E. Darrow, under the direction of Mr. Tomlin, cash'r D. C. S. A., paid all the judg'ts above mentioned by def't of about 16 or $1,700.00.

I understand from the conversation of Darrow and Tomlin that all liens on Kenney's land were to be discharged, and after the liens were removed the balance remaining out of the $10,000.00 loan, after paying such liens as had to be paid at the time, was to be paid to the Daviess County Savings Association, and with that view Mr. Tomlin, as cashier of said Daviess Co. Sav. Asso., was to enter satisfaction of all liens held by said association against P. S. Kenney and to take a second deed of trust on Kenney's lands for the balance due it from Kenney after crediting the amount paid by Darrow to it, said deed of trust to be a second and inferior lien to the deed of trust given by P. S. Kenney & wife to Lew E. Darrow, trustee for plaintiff, and also to a deed of trust given to David McNair for the use of Geo. W. Frank & Darrow. Darrow then, at the instance of Tomlin, paid the balance of the three judg'ts mentioned in this deposition, and Mr. Tomlin made the entries of satisfaction of the deeds of trust that I have heretofore given. Darrow then filed the two deeds of trust, one to plaintiffs as beneficiaries and one to Frank & D., beneficiaries, as

167 first liens on the lands of Kenney. Tomlin then filed a deed of trust given by P. S. Kenney & wife to him as trustee of the Daviess County Savings Association, which deed of trust has the following condition:

"This trust-deed is made subject to a trust-deed to Lew E. Darrow, dated July 1st, '79, and also to a trust-deed to David W. McNair, dated July 1st, 1879, so far as it relates to the lands included in said two trust-deeds, both of which are of record in the office of the recorder of deeds of Caldwell County, Mo."

Said deed of trust from which the above statement or condition is copied is recorded at page 156, deed of trust record X of said county.

Cross-examination:

I think the Kenney lands with the improvements, on June 30, '79, ought to have been worth from 20 to 25 $ per acre.

The land considered as wild land was worth from 10 to 12 $ per acre.

The improvements, considering fences, state of cultivation, buildings, wells, orchard, and other improvements, could not have been placed on the land for less than 10 to 12 $ per acre.

The dwelling-house is situated on the SE. quarter sec. 3, t'w'p 57, R. 29. The out-houses are on the same land.

The whole could not have been placed on the lands in June, '79, for less than 8 or 10,000 $, I think.

X.

LEW E. DARROW testified:

My age is 37; reside in Corning, Iowa; I am a banker. I am acquainted with the plaintiffs and defendants herein. The plaintiffs are residents and citizens of the State of New York, and the defendants are residents and citizens of the State of Mo.

168 I am acquainted with R. L. Tomlin; have known him since 1875 or '6.

Became acquainted with him by meeting him at his bank, the Daviess County Savings Association, at Gallatin, Mo. He was in charge of that bank when I became acquainted with him, and continued in charge of it up to and after the time of the commencement of this suit.

I frequently visited Gallatin on business and usually met Mr. Tomlin in his bank.

He had the sole charge and general management of the Daviess County Savings Association.

Yes, sir; during the months of July and August, 1879, the plaintiffs made a loan of $10,000.00 to P. S. Kenney, taking therefor a bond and deed of trust as security for the same, and I hand the officer taking this deposition the bond of said Kenney to copy as Exhibit A, and also the deed of trust to copy as Exhibit B. The copies hereto attached are true copies.

(Said copies are attached to the deposition and are made a part of this abstract by referring thereto without copying at length.)

Several years ago, probably in 1877 or '8, I was informed by Mr. Tomlin, cashier of the D. C. S. A., who managed the business of that bank,

that Mr. Kenney was largely indebted to that bank, and that it would be desirable both to Kenney and the bank if Kenney could obtain a loan on his property of sufficient size to pay the bank the amount he owed it. I inquired the amount and learned that it probably exceeded $20,000.00. I stated that this was a larger amount than one firm could loan on the land.

On the 3d day of July, 1879, we received a letter from Gillihan & Brossius, of Gallatin, Mo., which I hand to the notary to make Exhibit C.

Exhibit C is as follows:

169 GALLATIN, *July 1st*, '79.

Mess. G. W. F. & D.:

D'R SIRS: We enclose application of P. S. Kenney for $12,000.00 on his sheep ranch, the finest farm in NW. Mo.

The D. C. S. Ass'n will release old trust-deeds and take secured lien for their debt, which will be about $20,000.00. We understand the title is all O. K. * * *

G. & B.

This letter enclosed an application for a loan of $12,000.00 on his farm. I also hand the notary another letter of Gillihan & B., referring to same matter, to make Exhibit D.

Exhibit D is as follows:

GALLATIN, *July* 5, '79.

Mess. G. W. F. & D.:

D'R SIRS: Mr. Kenney wants his loan at 10 per cent. interest, no commission except one per cent., which we charge him.

D. C. S. A. intends to see interest paid; the annual wool clip will more than pay it, to say nothing of 400 or 500 wethers each year. * * *

G. & B.

We submitted a copy of the application to the plaintiffs in this case, who consented to make a loan upon it if, after a personal examination by me, the security was approved and the title was shown to be good and the deed of trust securing the debt to be a first lien.

I then notified them that I would be at Kenney's place on a certain day to examine the farm. On arriving at Kidder I met Mr. Brossius
170 and also Mr. Tomlin, cashier D. C. S. A., and we three went up to Kenney's farm and looked it over and examined the abstract.

I found that a portion of the land did not have good record title, and told them that I could not make the loan for $12,000.00 without the title could be made good. Kenney said he thought he could find the missing deeds. We left his place with the understanding that he was to do this, and when he had them all ready I was to go down again and close the transaction.

This was the state of the matter when I received a telegram from Mr. Tomlin, cashier D. C. S. A., which I hand to the notary to mark "Exhibit E" hereof.

Exhibit E is as follows:

GALLATIN, MO., 17, 1879.

GEO. W. FRANK & DARROW, *Corning:*

Kenney declines to complete loan. I will pay your expenses for trip down. I write.

R. L. TOMLIN, *Cashier.*

In a day or two I received a letter from Mr. Tomlin, which I hand to the notary to mark "Exhibit F."

Exhibit F is as follows:

GALLATIN, *July* 18, '79.

LEW E. DARROW:

D'R SIR: I dispatched you last night that Kenney could not complete the loan as contemplated.

I write now to say that he came to Gallatin yesterday and reported some obstacles which he had not mentioned before, and which would tend to make the loan undesirable for you under the circumstances.

If you will send down his abstract to Gillihan & B. to be delivered to me, and a statement of amount of your expenses & trouble in coming to
171 look at the land, I will pay your expenses and reasonable amount for your trouble.

I am sorry at this lame and impotent conclusion of the affair, but can't help it.

R. L. TOMLIN.

To this letter I made a reply, and hand the notary a copy of this reply to mark "Exhibit G."

Exhibit G is as follows:

CORNING, *July* 21, 1879.

R. L. TOMLIN:

D'R SIR: Y'rs of 18th inst. at hand. I am very sorry to hear that the loan to P. S. Kenney will have to fall through.

We have been to considerable trouble in New York to place the loan, having presented the application to several parties and obtaining the consent of one after much solicitation.

We would much prefer still to close the loan, unless there are serious obstacles to prevent it.

My expenses to examine the farm were just $15, and $25 additional would be very small pay for the amount of time and labor we have devoted to this loan.

In fact this would not cover our expenses.

We send the abstract to you, and if you find the loan cannot be closed we will send you Kenney's signatures to the bond he signed.

Let us hear from you.

LEW E. DARROW.

Expenses to Kidder, $15; time and expenses here & in New York, $25—$40.

172 In due course of mail came a letter from Mr. Tomlin, which I hand to the notary to make "Exhibit H."

Exhibit H is as follows:

GALLATIN, *July* 23, 1879.

G. W. F. & D.:

Y'rs of July 21st just received. Will say if you can let $12,000.00 go on the Kenney land without requiring him to supply deed to the 3 R. R. forties the loan may be finished up.

He is badly out with the H. & St. Joe R. R. officers; but he has been in open possession of the three forties for nearly 20 years, and wants nothing said that would call attention to the fact that he has no deed.

Regarding these three pieces, stricken out for the purposes of security, I still think the loan a good and safe one.

I will see that the house is insured for $3,500.00, and the interest of this bank is such (as you know) that the bank must protect your loan, both interest and principal, should Kenney fail to do so.

The aggregate wealth of our stockholders is more than $2,000,000.00, outside of their investment in the D. C. S. A., and they will never let this place sell.

But I don't apprehend any difficulty at all. Kenney will pay the loan. Let me know if this will suit you.

In case we go on and close the matter, you can obtain enough money to pay the Power debt in your hands, and as Mr. O. S. Smith, of St. Joe, or Mr. Culligan has the Power note, and Culligan is trustee for Power, and knows all about his whereabouts, you can pay off the note to Smith as you go through St. Joe, and he can procure release from Power.

The Ryan judgment and Breckinridge Bank judgment can be paid to the circuit clerk at Kingston.

I think that is all except our debt.

173 R. L. TOMLIN, *Cashier*.

To this letter was made reply, a copy of which I hand to the notary to mark "Exhibit I."

Exhibit I is as follows:

CORNING, *July* 25, '79.

R. L. TOMLIN, Esq., *Cashier*:

Y'rs of 23' inst. at hand. We would be willing to make the loan to Kenney for $10,000.00, and leave out the three forties R. R. land, and this would be what K. spoke of when we were there.

We think that this amount is all that we should place on the farm under the circumstances. This would be nearly $10 an acre on the land.

As we look upon it, the loan is virtually to your bank, unless by some good fortune Kenney should have unusual success and be able to redeem the land.

We do not believe our customers would care to loan the $12,000.00 and leave out the three forties, as there is another forty to which Kenney has title only by possession.

You remember the R. R. land is some of the best.

We should feel at liberty to make the loan for $10,000.00 on all land, except the R. R. forties, and would be willing to leave them out entirely.

If this will answer let us know, and we will make out new papers.

G. W. F. & D.

In response to this came another letter from Mr. Tomlin, cashier D. C. S. A., which I hand to the notary to mark "Exhibit J."

Exhibit J is as follows:

GALLATIN, *July* 28, '79.

G. W. F. & D.:

174 Y'rs of July 25 is at hand and contents considered.

You may make out new papers for the $10,000.00 loan to P. S. Kenney, leaving out the three R. R. forties.

I send you the abstract so you can obtain numbers of land to be included.

I suppose you will come down with the papers * * * all prepared.

Wish you would come through St. Joe, and call on O. S. Smith, and find out what is due on the Power note.

Get Smith to forward to Father Power a deed of release, to be executed and returned to him (Smith), then you can retain money to pay that debt until Smith is prepared to hand over deed of release.

As to the trust-deeds I bought in from other parties, such as Quirk, and Musser, and Barnum, I can satisfy the records, as assignee of the parties I bought from, and cancel the notes, and then leave them in your possession if you wish, though I am satisfied that I have a perfect (right) to enter satisfaction upon the records as assignee, the securities being negotiable and the owners having endorsed them to me, or the bank of which I am cashier.

I will write Mr. Kenney to-day advising him of the revival of the matter on this new basis.

You can fix a day when you will come down, and let me know some days ahead, * * * so that I can advise Kenney and have him ready.

If you could come Aug. 5, or next Tuesday, it might suit; but fix your own day.

R. L. TOMLIN, *Cashier.*

The reply to this letter is shown by Exhibit K.

Exhibit K is as follows:

CORNING, *July* 31, '79.

R. L. TOMLIN, *Cashier:*

175 Y'rs of 28 is at hand, and we expect to go to close Kenney $10,000.00 loan next Wednesday, Aug. 6.

Will send you the papers—to you—to-morrow, so you can have them executed Monday or Tuesday, and meet me at Hamilton or Kidder on the train Wednesday morning.

Will see Smith in St. Joe, if I can find him. Have written him this morning asking for amount due Power.

LEW E. DARROW.

We also wrote Mr. Tomlin, cash'r D. C. S. A., copy of which letter is attached as Exhibit L.

Exhibit L. is as follows:

CORNING, IOWA, *Aug.* 1, '79.

R. L. TOMLIN, Esq., *Cash'r:*

We inclose herewith papers in Patrick Kenney loan.

New trust-deed and bond in each case, and also 5 affidavits for K. to sign. Have dated the papers July 1st, thinking perhaps it would be more convenient at that time than Aug. 1st. Of course, we will adjust the interest when we settle up.

Have papers executed and bring them with you Wednesday morning.

We think it would be best for Kenney to go to Kingston with us in closing the loan.

Also have insurance effected to the amount stated in your letter, $3,000 or $3,500.

We will have old papers with us and surrender them when we see you.

Have Kenney take those deeds which he looked up and wanted recorded when we were there—tax deed to John Needough and q. c. deed from him to Kenny conveying NW. SE. 9, 57, 29.

G. W. F. & D.

It will be seen from these letters that the loan was to be reduced
176 from $12,000.00 to $10,000.00, and that portion of the land which did not have good title was left out.

On the 6th day of Aug., '79, I met Kenney and Tomlin at Hamilton, Mo., and we three went to Kingston, Mo., the county seat, to close the loan. Kenney had executed the papers that morning before leaving home, his wife joining him in the deed of trust.

We went to the circuit clerk, Tomlin, Kenney, and myself, and filed for record the deed of trust to the plaintiffs, and then the deeds of trust to our firm.

After these were filed Tomlin filed his deed of trust which Kenney had given to the D. C. S. A. for 35 or 36,000.00. Tomlin said this represented the entire indebtedness of Kenney to his bank, including all the liens against Kenney.

Then Tomlin, as cashier of the Dav. Co. Sav. Asso., released of record all the deeds of trust which were held by the D. C. S. A., which were as follows:

1st. A trust-deed to M. A. Low, trustee for Leslie P. Barnum, recorded in book G, page 84.

2d. A trust-deed to C. A. McLaughlin, trustee for Solomon Musser, recorded in book K, p'ge 3.

3d. A trust-deed to John Doolin for Nicholas Quirk, recorded in book K, p. 15.

4th. A trust-deed to Rob't L. Tomlin, trustee for the D. C. S. A., recorded in book K, p. 67.

5th. A trust-deed to Rob't L. Tomlin, trustee for D. C. S. A., recorded in book K, p. 74.

6th. A trust-deed to Rob't L. Tomlin, trustee for D. C. S. A., recorded in book K, p. 161.

7th. A trust-deed to Wm. C. Gillihan and Sam'l T. Brossius for D. C. S. A., recorded in book K, p. 212.

177 All of these deeds of trust, Tomlin told me, were the property of the D. C. S. A., and that he had full authority and right to cancel the same of record.

After these were cancelled I paid the clerk of the court $1,689.86, which was the amount due on these judgments, which were liens against Kenney, and were shown to be liens by the abstract furnished me by Kenney and Tomlin.

At the same time I paid Tomlin, as cashier of the Daviess County Savings Association $3,000.00, by dr'fts on N. Y., to apply on the payment of the $10,000.00 loan; and it was talked that this was to be applied by Tomlin on the indebtedness of Kenney to the bank.

There still remained one deed of trust, which was given to Culligan, trustee for Power, $5,000.00, which Tomlin wished me to retain the money for and pay off as I passed through St. Joseph on my way home.

I could not find Power, and it was some time before I could get trace of him to pay the am't due, which was $5,200.00.

This amount I paid Sept. 26th, which paid in full the deed of trust held by Power.

I hand to the notary copy of the letter written to R. L. Tomlin, cash'r, on the 9th of Aug., 1879, on my return home, which gives a statement of the entire transaction.

This is marked "Exhibit M."

Exhibit M is as follows:

CORNING, IOWA, *Aug. 9th*, '79.

R. L. TOMLIN, *Cash'r:*

D'R SIR: We find that you made a mistake in the name of Mr. Smith, of St. Joe, who transacts business for Father Power; it is O. M. Smith instead of O. S. Smith.

Had we known the correct name it would have saved us much trouble and time.

178 We saw Mr. Smith Thursday night, and he said he would send the release of the trust-deed at once.

We enclose draft for $201.14, the balance of the Kenney loan as per memorandum.

Amount of loan	$10,000 00
One month and six days' interest	100 00
Making a total of	$10,000 00
We paid clerk Caldwell Co	$1,689 86
We paid for recording trust-deeds	4 00
Paid you cash	5 00
" " dr'fts	3,000 00
We hold to pay Power claim	5,200 00
All of which, with am't inclosed	201 14
Makes am't of the loan	$10,100 00

Smith said he would inform us when he received the release, and then we should send him the money.

Hope it will come around all right in a short time.

GEO. W. FRANK & DARROW.

Above I have given a list of the liens on the land; they were all to be paid off and cancelled, and those held by the D. C. S. A. were to be made junior and inferior to the deed of trust given to secure the plaintiffs, and also the one to Frank & Darrow.

This was fully understood and agreed to by Tomlin, Kenney, and myself, and was the only condition on which plaintiffs would make the loan.

I depended on the abstract of title that showed the liens, including the judgments; also the statements of Tomlin and K., as regards the relation of K. to the D. C. S. A.

Plaintiffs loaned the full am't of $10,000.00; they also paid $100 interest, as the loan was not made until the 6th of Aug., but for convenience the papers were dated on the first of July, and for the difference
179 of one month and six days they paid $100, making $10,100.00 they paid on the loan, every dollar of which was applied on the indebtedness of Kenney to the Daviess County Savings Association, to pay the judgments against Kenney, to pay the Power deed of trust, &c.

Kenney did not receive one cent of the money.

It was applied under the direction of Tomlin.

The deeds of trust of the Daviess County Sav. Asso. were cancelled by Tomlin as the manager and cashier of the bank. The Powers deed was afterward released by executing a formal release, which is on record.

We paid the Power deed of trust; I have not the original papers. It was for $5,000, and at the time it was paid interest was due on it from Apr. 1st, 1879, at 8 per cent., $200, in all $5,200, which was the amount paid by us. The payment was attended to by our firm for Mr. Tomlin, cashier, and at his request.

The interest that became due on the loan made by the plaintiffs, Jan'ry 1st, 1880, we received by draft of the Daviess County Savings Asso. I hand the notary the letter transmitting the same, to be marked "Exhibit N."

Exhibit N is as follows:

GALLATIN, MO., *Dec.* 20, 1879.

Mess. Geo. W. Frank & D.:

D'R SIRS: I enclose draft $500.00 to pay the interest on P. S. Kenney. Please return interest coupon to me, as I will have to hold it against him until the sheep are sheared.

Please advise me also how much money it took to settle the Power debt, and if there was any balance left in y'r hands on account of the Kenney loan after paying Power.

R. L. TOMLIN, *Cashier.*

180 I believe that all of the indebtedness paid off was an unquestionable lien upon Kenney's lands.

This I was led *to* believe from the abstract furnished me and from the statements of Tomlin and Kenney.

The first knowledge that I had that the D. C. S. A. claimed any right or interest under these old deeds that were cancelled was in the month of

June, 1880. A copy of a notice of sale under these deeds was sent us with the information that the D. C. S. A. did not wish us to know anything about it and desired to keep it a secret from us until after the sale.

The plaintiffs knew nothing about this transaction except such information as they got through me and such as they received from the papers.

They demanded that they should have a first lien on the land, and that all the other liens should be removed for that purpose.

They depended upon me to see that the lands were clear and that their lien as a first lien should be unquestionable.

I saw that Tomlin had entire control of the bank.

He assured me that he had the right to cancel the deeds of trust, and from all that I could see and learn about the matter I had no doubt of Tomlin's authority to cancel the deeds of trust and make the contract that he did.

I reported to the plaintiffs that everything was all right, and they, believing that it was, advanced the money.

Had any one raised any question or had any circumstance or fact come to my knowledge there was any doubt as to his authority I never would have made the loan.

As soon as I heard that they were proceeding to sell, as above stated, I took steps immediately to procure this injunction.

181 During the entire time of the negotiations concerning this loan Robt. L. Tomlin was in the entire management of the Daviess County Savings Association.

I knew of no one else who had any hand in the management.

I never saw any other person or officer in the employ of the bank but a clerk, though I have been in the bank a dozen times at different periods within the last six years.

He had as full and unlimited control of the bank, to all appearance, as if it was entirely his property.

At the time I went down to get the injunction I found the bank had advertised to sell under all these old deeds of trust.

When the old deeds of trust were cancelled of record by Tomlin for the bank he offered to turn over the originals to me, but I told him they properly belonged to Kenney.

And he promised to turn them over to Kenney the next time he came to Gallatin.

Cross-examination:

Yes, I have been at the place of business of the D. C. S. A. probably 12 times, but never saw any other officer but Tomlin around there, either before or after this loan.

I sent the papers to Tomlin to have them signed.

I was not present when they were signed.

Yes, the Power deed was paid by us; the lands described therein are the S. ½ sec. and E. ½ SE. ¼ sec. 4, twp. 57, R. 29.

I was informed by Mr. Tomlin, by Gillihan & Brossius, who were the att'ys of the bank, that the president, Col. McFerran, lived in Colorado. That he made visits there occasionally, once in a year or two, and that Tomlin managed the entire business of the bank.

182 I had enquired several times previous to this transaction who were the owners, and was generally told that McFerran owned

most of it, and Tomlin was interested, and one or two other parties, who were seldom found at the bank.

I did not know who the directors were, and never heard that there were any directors.

I never had access to the records of the bank to see who attended to all of the business of various kinds.

I enquired into the business of the bank and its management at different times, and of other persons besides Tomlin.

Before making this loan Gillihan & Brossius had told me that Tomlin managed the bank locally. That McFerran was a large stockholder, but Tomlin was the only man who paid much attention to the bank, and he did all the business in the way of managing it.

I received the same information from other persons in Gallatin, and the bank was often referred to as Tomlin's bank.

I never found any other officer of the bank present at any time, and knew from actual knowledge, by seeing releases of record made by Mr. Tomlin as cashier, that Tomlin had released similar deeds of trust on the records of Daviess Co., Mo.

I came to the natural conclusion, as Mr. Tomlin had authority to transact all the business of the bank behind its counter, attend to the correspondence, make loans, and cancel deeds of trust of record, that his statements to me that he had authority to cancel the deeds of trust was correct.

Copies of the note and deed of trust which we received as commission are hereto attached, marked Exhibits "O" & "P."

183 The Kenney farm, with the improvements at date of the loan, was worth perhaps $30 per acre.

The house is good; cost perhaps between 5 and $10,000.00.

I knew that the entire indebtedness of Kenney to the bank, which were secured by the old deeds of trust, and were released by the bank through Tomlin, cash'r, had been paid by Kenney having given new note and new deed of trust for the entire indebtedness.

Tomlin told me that the $10,000 would be endorsed on this new note, which was for some 35 or $36,000.00.

The plaintiffs have actually paid through $10,100.00 on this loan, for the sole benefit of the D. C. S. A.

Mr. Tomlin had the new note and deed of trust for the 35 or $36,000 delivered to him before he released any of the deeds of trust.

(The trust-deed and bond to pl'ffs Exhibits A & B, and those to Frank & Darrow, Exhibits O & P, are made part of this abstract by reference thereto, but not copied here.)

XI.

Stipulation as to replication.

By stipulation of the parties on file it is agreed that issue may be taken as to the several matters set forth in the answer by a general denial. This agreement also applies to No. 336 on this docket.

DEFENDANTS' EVIDENCE.

XII.

ROBERT L. TOMLIN testified:

My age is 43.

1st. I recognize the trust-deed handed to me as one purchased by me of Mary Barnum for the D. C. S. A.

This is the note secured thereby.

184 It has certain assignments and endorsements of payments thereon. (See deposition.)

(Here follows a minute description of the deed of trust, being the same as has heretofore been given in the deposition of Jeff. Davis. See page 41, paragraph 1, hereof.)

The note has the following bank-stamp endors'ment on the face and back thereof, and the deed of trust the same endorsement on the back thereof, to wit:

(Stamped:) Daviess County Savings Association, paid, Gallatin, Mo.

2nd. This deed of trust is one bought by me for the D. C. S. A., of Nicholas Quirk.

(Here follows a minute description of the deed, being the same as is given in deposition of Jeff. Davis, on page 43, in paragraph 3, hereof.)

The note has endorsements of payments and assignments thereon. (See deposition.)

The deed of trust has on the back of the same, and the note secured thereby on the face of the same, the following bank-stamp endorsement:

(Stamped:) Daviess County Savings Association, paid, Gallatin, Mo.

3d. This is a deed of trust purchased by me of Solomon Musser for D. C. S. A.

(Here follows a minute description of said deed, being the same as is given by Jeff. Davis in paragraph 2, page 42, hereof.)

This is the note secured by said deed of trust; it has endorsements on back. (See deposition.)

The deed of trust has on the back of it and the note on the face of it the following bank-stamp endorsement:

185 (Stamped:) Daviess County Savings Association, paid, Gallatin, Mo.

4th. This is a deed of trust given by Kenney to me for D. C. S. A.

(Here follows a minute description of the deed, the same as given by Jeff. Davis in par. 4 on page 43 hereof.)

This is the note secured by said deed. On the back of said note is the following: "Int. paid to Feb'y 28, '76, by Kenney, part in Naven note."

The above deed has on the back of it and the note on the face of it the following bank-stamp endorsement:

(Stamped:) Daviess County Savings Association, paid, Gallatin, Mo.

5th. This deed of trust is one given by Kenney to Gillihan & Brossius for D. C. S. A.

(Here the deed is minutely described the same as is set forth in par. 7, page 45 hereof, in deposition of Jeff. Davis.)

This is also one of the notes secured thereby. The other note is not here; don't know what has become of it, but it is also stamped as this one is.

This deed of trust has on the back of it and the notes on the face of same the following bank-stamp endorsement:

(Stamped:) Daviess County Savings Association, paid, Gallatin, Mo.

6th. This deed of trust was given by Kenney to me for the D. C. S. A.

(Here follows a minute description of deed, same as given by Jeff. Davis in par. 5, p. 44 hereof.)

This is the note secured thereby. The deed has on the back and the note on the face the following bank-stamp endorsement:

186 (Stamped:) Daviess County Savings Association, paid, Gallatin, Mo.

All of the above deeds of trust and notes are cancelled by the bank stamp as above set forth; this was done by me in August, 1879.

Neither of them were actually paid in money.

The cancellation was in pursuance of an agreement between me and Kenney that I should take a new note covering all of said notes and a new deed of trust.

This agreement was also with Lew E. Darrow.

I made this agreement in the capacity of the cashier of the Daviess County Savings Association.

I agreed with Darrow that after I had satisfied the recorded deeds of trust on Kenney's lands held by the D. C. S. A., that before filing the new deed of trust for the bank that the deed of trust to Darrow for the $10,000.00 loan might be filed.

Darrow loaned Kenney $10,000.00, and I entered satisfaction on the records of Caldwell Co., Mo., and permitted Darrow to file a prior lien on the land.

I received $3,000.00 from Kenney on his indebtedness to the bank at the time of this transaction and credited it on Kenney's new note which I had taken.

The new note to the D. C. S. A. and the new deed of trust executed by Kenney and wife to secure such note were delivered to me before Kenney paid me the $3,000.00.

The contract was that Darrow was to loan K. $10,000, out of which Darrow was to pay off for K. the Power deed of trust for $5,000.00 and some interest, and the judg't against P. S. Kenney held by the bank of Breckenridge, Mo., and a judgment held against Kenney by the

187 estate of Thomas Ryan, dec'd, and the remainder of the $10,000 loan the D. C. S. A. was to receive at the hands of Lew E. Darrow.

That amount was $3,000, which I credited on the new note of Kenney. Darrow afterwards sent me a draft for small am't, which I credited on an indebtedness against Kenney which was not secured by a deed of trust.

To bring about this state of things I agreed to enter satisfaction on the records as aforesaid.

The bank received no other or further consideration than I have mentioned.

The cancellation of the deeds and notes heretofore set out was a part of this transaction, as was also the entry of satisfaction on the records.

I had no power of att'y from the bank or its director' to enter such satisfaction; I never had any such power of att'y to enter satisfaction of any records either in Caldwell Co. or elsewhere, or for any other purpose.

None of the directors knew anything about this agreement but myself. Henry, Tuggle, McFerran, and myself were the directors at the time.

The first time the directors canvassed the matter, so far as I know, was in Feb'y, 1880.

Henry and Tuggle were in town frequently, and I saw them. Did not say anything to them about it.

I kept up a correspondence with McFerran, and made statements of the condition of the bank every 15 days; that is, statements of its resources and liabilities.

My standing instructions from McFerran was to render to him semi-monthly statements of the condition of the bank.

He would wind up his letters with, "Keep me posted."

I did not notify McFerran of these entries of satisfaction.

188 As between Darrow and me, the question of my authority to enter satisfaction of the records was never raised. I did not make any statement to him in reference thereto.

The directors, or Col. McFerran, speaking for them, notified me in Feb'y, 1880, that they would not approve of my acts in reference to this matter.

In the spring of '80 the directors ordered the Kenney lands sold under the deeds of trust that I had satisfied on the records.

There was no necessity for the bank to raise money through this loan to Kenney.

I had no authority to make contracts in relation to satisfaction or enter cancellation of deeds of trust, except such authority as legally pertains to the office of cashier.

I requested Kenney to procure the loan and get the Power deed of trust and the two judgments off the records.

The note of Kenney for $36,680.30 covered indebtedness of Kenney to the bank other than that secured by deeds of trust.

The new note was secured by deed of trust on Kenney's lands, subject to plaintiffs' deed of trust.

The entries made on the books of the Daviess County Savings Association at the time of this transaction by me are shown in Exhibit C.

Exhibit C is as follows:

GALLATIN, MO., *August* 7, 1879.

Discounts paid:	
P. S. Kenney (9 notes paid)	$25,265 14
P. S. Kenney, paid by Darrow	3,000 00
Discounts out:	
P. S. Kenney	$36,680 30

The entry of the 36,680.30 is the new note taken from Kenney for his indebtedness to the bank.

189 Cross-examination:

Was acting cashier from June 10, '70, to Jan'y 1st, '72, at which time I was elected cashier and served as such to Jan'y 1st, '81.

I was a director all or nearly all time.

Was director in 1879.

I am a licensed attorney of this State, but never practised.

From 1873 up to Jan'y 1st, 1879, the president of the bank lived in Colorado.

I was daily in the bank as cashier. I conducted the business of the bank; had charge of all the business between the bank and its patrons, and managed all such business as making contracts, except in cases where controversies arose between me as cashier and customers.

It was custom to submit controversies as they arose to McFerran and get directions from him as to the course I would take.

I never sold a piece of land and made a deed for it, and was not in the habit of foreclosing mortgages or deeds of trust, without first advising McFerran or other directors of the bank of my intended action.

After McFerran left here I made contracts for the sale of real estate, and sent deeds to McFerran to sign. I advised parties I could not make them a title unless McFerran approved of it; it was no contract.

Question. During this time from 1873 to 1880, when a man applied to the bank for a loan, giving a trust-deed, or made payment on trust-deed, and wanted part of land released, or to borrow an additional sum of money, or to change the form of his indebtedness, you attended to that business, did you not?

Answer. When such business was done I attended to it.

190 There were not less than three directors in 1879; possibly 5. I don't recollect.

The records of the bank shows that there was no election of directors or meeting of directors from Dec. 12, 1865, to Dec. 18th, 1869.

The bank held some liens on a portion of Kenney's land that were prior to all other liens on those lands, but the deed of trust held by Jas. D. Power and the judgments owned by the Breckenridge Bank, and judgment owned by estate of Thos. Ryan, were liens prior to a portion of the deeds of trust held by the bank.

Some of the bank's deeds of trust were signed by P. S. Kenney alone, and I knew this at the time of this transaction.

I requested Kenney to obtain a loan in order that he might pay off the liens that I thought prior to part of the bank liens.

Such liens which I wished paid off were past due, and I feared the holders of the same might attempt to collect their money by a sale of K.'s lands, and for the further reason that the deed to Power was liable to be foreclosed by publishing notice in a paper in Buchanan Co., Mo., and I feared that knowledge of the same might not reach me.

I wished also to obtain the signature of Kenney's wife to the bank's deed of trust, which would cover all of Kenney's land.

The liens which I refer to as being "prior" to the liens of the bank, and which I requested him to obtain the loan to pay, were the Power deed of trust, the judgment of Breckenridge Bank and Thos. Ryan.

I think I corresponded with Frank & D. with a view to bringing about the loan.

191 The reason I did not as cashier make the loan to Kenney to pay off these prior liens was, 1st, I did not wish to advance any more money on Kenney's land unless compelled to do so. I thought he would be more prompt in paying interest to strangers.

It is not true that I could not have raised the money to pay off the liens.

Question. I do not ask you as to whether the bank might not possibly have advanced the $7,000 to pay off these prior liens, but whether you considered it right in reference to the general business of the bank that it should do so?

Answer. I considered it best, and therefore right, that the bank should not do so at that time.

The arrangement that I made with Frank & D. was substantially this:

1st. That the D. C. S. A. should release and cancel its deeds of trust on Kenney's lands, allowing the loan to be made to him by F. & D., to come in and be prior as a lien to any claim held by the bank, and in consideration of this they were to make the loan of $10,000.00 and to pay off the Power deed of trust and the two judgments, and the rest of the money was to be paid over to me to apply on Kenney's indebtedness to the bank.

Darrow came, and he and I went to Kingston, and the money was applied according to the understanding between Darrow and myself heretofore alluded to.

The 3,000 I received for the bank did not go through Kenney's hands at all; Darrow paid it directly to me, and I applied it on Kenney's indebtedness to the bank.

At this time I took the new note for $36,680.30, and also the new deed of trust, and filed it within a few minutes after Darrow filed his,

Not having the old notes with me at Kingston, I told Kenney I would come to Gallatin and cancel the old notes and send them to him.

192 he desiring that they should not be destroyed, as he wished to keep them.

When I came home I cancelled the old notes and deeds of trust pertaining to them by stamping upon them "paid," as appears on the same, and then placed the notes and deeds in an envelope marked with P. S. Kenney's address, intending to mail them to him.

But on reflection I concluded to let the package remain in the bank until I saw Kenney, and deliver it to him, as the package was bulky and would take considerable postage, and as it was not urging, as he could have no use for them except to preserve them for reference.

The new note of Kenney for $36,680.30 I credited with the $3,000.00 as a partial payment received thereon, and entered the $3,000.00 on the books as a partial payment of said note.

The old notes were marked on the books as "paid," and the new note was entered as the one which Kenny was to pay belonging to the bank.

The $3,000 went into the general funds of the bank and was used by the bank in its business.

Neither the directors nor any officer of the bank have ever ordered the entries in the books aforesaid to be changed, and they have never been changed.

The 3,000$ that went into the general funds of the bank has never been ordered taken out by the directors or any officer of the bank, and it has never been taken out.

The $3,000 has never been tendered back, to my knowledge, and no steps taken by the bank to rescind the contract, to my knowledge, except the directors informed me that they ignored and repudiated it.

193 The further sum that I have spoken of as being received by me from Darrow was applied by me on other indebtedness of Kenney that was not secured by deeds of trust or otherwise.

At one time prior to this transaction Kenney owed the bank 7,000$, which was insured by chattel mortgage on cattle.

He sold the cattle on the Chicago market and failed to pay us any of the money.

I gave up the old papers and took new ones—deed of trust on land, deeming it for the best interests of the bank.

As regards informing the directors of this transaction will say: The entries were made in the books at the date they purport to be made.

The books have been accessable to all the directors at all times.

There was no controversy at the time between Kenney and myself or Kenney and the bank as to the am't of his indebtedness or his willingness to pay.

The am't of his indebtedness not being increased to the bank by this transaction, and the stockholders already knowing that K.'s indebtedness to the bank was large, I did not see any necessity for rehearsing the transaction to the stockholders or directors, and therefore did not do so.

I did not either try to conceal or parade the transaction.

Did not enjoin secrecy on the clerk (Clingman) or Gillihan & Brossius, whom I consulted and took their advice as attorneys; they were also relations of a part of the stockholders.

194 In entering into this transaction I was not trying to take the advantage of any one, but was seeking to get K.'s indebtedness to the bank in better shape than it had been and to secure for him further time.

It never occurred to me that I might be acting beyond the scope of my legal powers as cashier.

I believed that in what I was doing I was doing right by all parties concerned.

At the time McFerran came here in Feb'y, 1880, he exhibited a knowledge of this transaction. I think he told me he had been corresponding with Holliday about it.

In Feb'y, 1880, while explaining to McFerran the details of this transaction, I exhibited to him the old notes and deeds, they having remained in my possession, in the original package I put them in, from the time of the loan up to that time.

He took possession of them, saying they were the property of the bank.

They have not been in my keeping or possession since.

I don't know where he took them to.

Since the taking of said new deed of trust by me, Kenney has given up all the land described in said new deed to the bank, and has leased the same back from it. Kenney & Hemry both told me so.

As to the bank keeping the sale under these old deeds of trust a secret, Hemry, the then president of the bank, told me that the directors objected to me interfering with the Frank & D. loan in any way.

He said that the advertisements would appear in the newspapers as the law required, and would likely raise talk enough.

195 I think Hemry did object to my writing to Frank & D. or any one else about it.

Hemry sent me to Gillihan & B. to request them to act in the deed where they were trustees, or to refuse.

In case they acted, to simply advertise and say nothing more about it.

No, sir; no director ever questioned my authority to act in this transaction until McFerran came here from Colorado in Feb'y, 1880.

I was not present at the election of bank officers in Jan'y, 1881, and was not elected cashier.

I was told afterwards by two of the directors that however much they might have wished to retain me they were unable to do so, having repudiated my acts.

That it would prejudice them in the progress of this suit.

That this had only recently occurred to them.

I refuse to attach my letter of July 28, 1879, to Frank & D. to this deposition as an exhibit, unless I may give my interpretation of the paper.

(This was refused by pl'ffs' att'y, and paper was not attached.)

Re-examination:

196 No, sir; I had no talk with the directors or officers of the bank on the subject of the Kenney loan before it was made. They had not authorized me to do so.

The chattel mortgage I spoke of canceling I had no conversation with any director about it until it was done.

They had given no authority for me to do so.

Yes, the charge on the Kenney land was increased by the McNair deed $1,000.00.

I had only such charge of the business of the bank as devolved upon me by virtue of my position as cashier.

Previously to 1878 I was employed by the year; after the passage of the present banking law of Mo. I was subject to be removed at any time.

My year's service for 1880 began with Jan'ry, 1880.

Recross-examination:

The law under which I might have been removed at any time by the board of directors took effect in the year 1878.

XIII.

JOHN A. TUGGLE testified:

My age is 73; I am a director of the D. C. S. A.; been such about all the time since its organization.

I was present at a meeting of its stockholders in Gallatin Jan'y 1st, '79.

I attach the minutes of that meeting hereto; make it Exhibit A.

Exhibit A is as follows:

GALLATIN, MO., *Jan'y 1st*, '79.

At a regular meeting of the stockholders of the D. C. S. A. on the date above, present McFerran, by his proxy, R. L. Tomlin, Hemry, Tuggle, & Tomlin.

An election was held for president, cashier, and directors.

197 Hemry was chosen pres't, Tomlin cashier, for said year 1879.

The salary for cashier fixed at $75 per month.

The following were chosen directors:

Hemry, Tuggle, McFerran, and Tomlin.

There being no further business, meeting adjourned.

R. L. TOMLIN, *Sec'y.*

I have acted as director to "some extent" ever since I was appointed. Never refused to act. Live 9 miles from Gallatin; am here about once a month; sometimes stay a week at a time; I was in the bank frequently.

Never gave much attention to the affairs of the bank.

Tomlin never consulted me with reference to entering satisfaction of record on deeds of trust.

Never knew anything about his doing so until after this case came up.

Don't know of the board authorizing him to do so.

Never knew anything about this Kenney loan until after it was made.

Never heard that he had assumed to release bank deeds of trust until about a year ago now.

Directors never authorized it to be done.

I was presiding judge of the county court in '79.

Have been a judge since '72. Never missed but one or two terms of court.

The notice of annual election of officers think has generally been published.

Cross-examination:

When I was at Gallatin the times I speak of I was most of the time at court.

I could not say whether we ever had meetings of the directors prior to '79, except when advertised.

There has been a meeting of directors since this loan was made, but I do not remember of any before.

198 I did not do anything about running the affairs of the bank at the times I speak of being in town.

Except I would inquire about how it was running; I would go in and ask the officers how the bank was getting along.

I never examined the books, money, or notes of the bank.

I saw McFerran & Hemry examine the books, papers, &c., before this loan was made.

Sometimes I saw McFerran by himself, and sometimes Hemry would do so by himself.

Could not say how often I saw either of them examine books, &c.

Don't know that I ever saw them make examination any other time except regular meetings.

This book is a record of the proceedings of the board of directors, I suppose.

This book does not show any meeting of the board or other officers of the bank for 4 years, from 1865 to 1869.

It shows that the next meeting after Dec. 18th, '69, was Jan'y 2, '72.

As shown in this book, the meeting of the board of directors were simply for the purpose of electing officers and declaring dividends.

Don't think there is anything in the book fixing my authority as a director, except that I was elected. There is nothing in the book prescribing rules for the board of directors.

From '73 to '79 the pres't was in Colo.

Tomlin was attending to the business of the bank from '73 up to time this loan was made.

Clingman was clerk.

I suppose McFerran was superintending the business.

When a man applied to the bank for a loan, or to have a deed of trust changed, or the security changed, my understanding was that Tomlin attended to it.

199 I suppose Tomlin has been attending to such matters from '73 up to the time this loan was made.

I understood that deeds of trust were being given to the bank.

I knew it was necessary to cancels deeds of trust in the course of the bank's business.

I also knew that the business of the bank was varied and presented itself in different forms, and I understood that Tomlin was properly attending to this matter.

I never questioned Mr. Tomlin's right to cancel a deed of trust from '73 to '79.

Never knew of any other director questioning his right during that time.

It was expected by me that Tomlin would go on under the superintendence of McFerran and transact the business to the best interest of the bank.

There is nothing in the record in this book that I know of that placed the business of the bank under the supervision of McFerran.

I understood he would superintend it, that was my supposition.

I think it would be more binding on the bank if Col. McFerran had cancelled the deeds of trust instead of Tomlin.

Question. Suppose Kenney had gone to Colo. and McFerran had cancelled these deeds without consulting the directors, do you consider it would be binding?

Answ. I am not lawyer enough to answer that question.

Tomlin was acting as cashier from '63 up to the time of making this loan, and, so far as I know, was transacting generally all the business necessary to be transacted here at the bank.

Quest. Who was acting as the gen'l ag't of the bank here in Gallatin from '73 to '79?

200 Answ. Mr. Tomlin was cashier and doing the business. Don't know that he ever told me of cancelling any deeds of trust. I understood that he was cancelling deeds of trust whenever it was necessary.

Quest. Suppose a man applied to the bank for a loan on deed of trust and afterwards gave other security and wanted those lands released, who did you expect would cancel the deed of trust given and attend to the business?

Answ. I expected Tomlin attended to it.

Quest. Do you suppose he had such authority from '73 up to the time this loan was made?

Answ. I understood he was doing it. I never thought much about it, and knew nothing about his authority.

Quest. You have said before that you expected him to do such acts as that. Now, if you expected him to do it you supposed he had authority to do it?

Answ. I don't remember of stating that I expected him to do it.

Quest. Now, supposing that in '78 a man should have come into the bank and wanted a deed of trust cancelled which he had given previously for a loan, and wanted to give a new deed of trust on different property to secure that loan, who did you expect to attend to that business?

Answ. I think that question has been answered a time or two. My understanding is that Tomlin was doing the business of the bank. Cannot say when it was I first heard of this loan. When I heard it I did not do anything.

I don't think I did or said anything until I met the directors.

The meeting I refer to of directors was either in Jan'ry or Feb'y, 1880.

Yes; McFerran was present at that meeting.

201 I heard Hemry talking about it prior to that meeting. When the board met we went back on the transaction, clear back on it.

Quest. I call your attention to the record of your meeting Jan'y 1st, 1880, and ask you to attach a copy of that record as Exhibit B to your deposition. And I further ask you if there is one word said in that record about that transaction?

Answ. I don't see any mention of the transaction on the record. I will attach copy and mark it "B."

Exhibit B is as follows:

GALLATIN, MO., *Jan'y* 1, 1880.

At a meeting of the directors of the Daviess County Savings Association, held Jan'ry 1st, 1880, the following business was transacted, viz: It appearing to the board that the amount of earnings on hand at the close of the six months ending Dec. 31, '79, is the sum of $3,534.83, it was ordered that no dividend be declared on the capital stock of the association, but that 5 per cent. interest on the deposits of the stockholders for said months be paid, and that the remainder of said earnings be carried on the books of the association, which was done, as follows:

To James Hemry, $32,700.00, 5 per cent.....	1,635 00
" " McFerran, $16,828.00, " " "	841 40
" John A. Tuggle, 7,881, " " "	394 05
Leaving a balance of.....	664 38
	$3,534 83

Which balance is carried to the books of the association.

R. L. TOMLIN, *Sec'y.*

I cannot find any record in this book where the board of directors ever went back on or disapproved of this transaction.

202 I do not know what was done with the new note and deed of trust. I suppose the bank still has them.

Do not know of them ever tendering back any papers or money it got by virtue of this transaction.

There is no record of a meeting of the directors or bank meeting in Feb'y, 1880.

McFerran was the leading spirit in opposing this transaction.

He advised us to oppose it.

XIV.

PATRICK S. KENNEY testified:

My age is 49. There are 1,240 acres of land covered by the different deeds of trust.

The buildings are on the E. half SE. quarter sec. 3, t'p 57, R. 29.

The Power debt and the judgments were not being pressed for collection at the date of this loan.

The plaintiffs' deed of trust and that to Frank & D. covers 1,080 acres of land.

Cross-examination:

The deed of trust to Power was prior to all liens except the Barnum deed.

It was at the instance of Tomlin that I applied to the plaintiffs for the loan.

I don't know of any one having charge of the monied affairs from 1869 to '79 but Tomlin.

I had frequent transactions with the bank; did business with Tomlin.

I did not know during that time who the directors of the bank were.

Tomlin was present when the two judgments were satisfied.

It was agreed between Tomlin, Darrow, and myself they should be paid.

203 I did not get a nickel out of the money.

The loan was not made for my benefit or accommodation; it was a detriment to me.

At the time Tomlin sent off the first payment of interest I did not have any money in the bank.

I leased the property covered by these deeds of trust from the bank by written lease. The date of the lease is Apr. 15, 1880.

XV.

JAMES HEMRY testified:

My age is 62. The first I knew of this loan was in Feb'y, 1880.

The directors of the bank in 1879 were Tuggle, Tomlin, and myself.

Cross-examination:

Since I have been a director of the bank, since '73, and during this time, have never known of any such matter as passing on any loans in favor of bank, or directing the satisfaction of same or any deed of trust, or in relation to the taking or releasing of its securities, ever coming before the directors.

The board of directors have never made any rules in relation to the cancellation of securities or approval of loans, to my knowledge.

Quest. From '73 to '79 I will get you to state if Tomlin did not pass on all securities in favor of the bank.

Answ. Don't know. I knew that McFerran had chief control; I was relying on him.

Ques. You may now state instances, if any, where McFerran passed on or released or cancelled securities from '73 to '79.

Answ. I was not present at the taking or releasing of any securities during the years mentioned.

204 Ques. Was it not your duty as a director to look after the taking and satisfaction of deeds of trust?

Ans. I did not know at that time it was my duty; I trusted to the management of the pres't.

Quest. Did you or do you know of any other of the directors prior to the time you were made president directing or assuming to direct the taking and releasing of securities of the bank?

Answ. I did not myself, as director, nor do I, know of any other individual director directing as to the releasing of securities. To be very particular, I don't think of any particular case in which I directed or advised.

Ques. You speak of an arrangement made between yourself, McFerran, and Tomlin about semi-monthly statements. Was any record ever made of this arrangement? If not, what notice was given to the public?

Answ. I don't know that any record was made of the arrangement or not; and no notice was given to the public. It was McFerran that first advised the rejection of this transaction.

Re-examination:

I knew of no necessity of calling the board of directors together prior to '79 to consider the discounts of the bank and the security for the same or the releasing of the securities.

There was no difficulty arising in such matters during the time I was a director.

While McFerran was president the business proceeded smoothly without trouble.

XVI.

ROBT. L. TOMLIN testified (2nd deposition):

205 When the loan was made there was no run being made on the bank. It was indebted to Daviess Co. in the sum of $.

The county judge had requested that this sum be paid, and while the bank could have used that money there was no great pressing need of money and no urgency on the part of the county court in its demands.

James McFerran was neither an officer nor a director in 1879—he resided in Colorado—the laws of Mo. excluding him from such position by reason of his being a non-resident of Mo.

All the officers and directors resided in Daviess County in 1879.

I do not remember of ever satisfying a lien before this except when payment was made.

The custom of the bank was to satisfy no liens except upon actual payments.

XVII.

JAMES MCFERRAN testified:

My age is 61; I am a banker and reside at Colorado Springs; have resided there for 8 years.

The D. C. S. A. was organized in 1865, with a capital stock of $5,000.

Henry succeeded me as president on the 1st of January, 1880.

(This deposition was taken at Colo. Springs, on questions filed only by defendants. No appearance by the plaintiffs.)

206 STATE OF MISSOURI,
County of Caldwell, ss:

Deposition of witness produced, sworn, and examined on the 11th day of July, in the year of our Lord 1881, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day, at Kingston, in the county of Caldwell and State of Missouri, before Winfield Miller, clerk of the circuit court in and for said Caldwell County, in a certain cause now pending in the circuit court of the United States in and for the western division of the western district of Missouri, at Kansas City, Mo., between Albert S. Webb et al., plaintiffs, and Daviess County Savings Association et al. are defendants, on the part of the plaintiffs.

And on the day named by the attorney of said plaintiffs for the taking of said deposition, JEFF DAVIS, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

1st interrog. What is your name, age, and place of residence and occupation?

Ans. My name is Jeff Davis; my age 27; my place of residence Kingston, Caldwell County, Missouri, and occupation lawyer.

Interrogatory 2nd. Will you please examine the records in the recorder's office of Caldwell County, Missouri, and among said records state whether or not you find recorded the following trust-deeds, to wit: A deed given by Patrick S. Kenney to M. A. Low, trustee for Leslie P. Barnum, dated Feb'y 8th, 1872; one by the same grantor to C. S. McLaughlin, trustee of Solomon Musser, dated Nov. 17th, 1873; one by the same grantor to John Doolan, trustee for Nicholas Quirk, dated Dec. 20, 1873;
207 one by the same grantor, dated August 28th, 1874, to Robert L. Tomlin, trustee for the Daviess County Savings Association; one by the same grantor, dated Sept. 21, 1874, to R. L. Tomlin, trustee for the Daviess County Savings Association; and one by the same grantor, dated May 24, 1875, to R. L. Tomlin, trustee for the Daviess County Savings Association; and one by the same grantor, dated April 21st, 1876, to Gillihan & Brossius, trustees for the Daviess County Savings Association; also a trust-deed given by said grantor and wife to Thomas Culligan, trustee for J. D. Powers? State fully.

Answer. I have carefully examined the records in the recorder's office of Caldwell County, Missouri, and find trust-deeds referred to in interrogatory number two described as follows: At page 84, deeds of trust record, letter G, there is recorded a deed of trust given by P. S. Kenney and wife, Elizabeth, to M. A. Low, trustee for Leslie P. Barnum, dated Feb'y 8th, 1872; at page 3, trust-deeds, letter K, there is recorded a deed of trust given by P. S. Kenney to C. S. McLaughlin, trustee for Solomon Musser, dated Nov. 14th, 1873; at page 15, trust-deeds, letter K, there is recorded a deed of trust given by Patrick S. Kenney and Elizabeth A., his wife, to John Doolan, trustee for Nicholas Quirk, dated Dec. 20th, 1873; at page 67, trust-deeds, letter K, there is recorded a trust-deed given by Patrick S. Kenney and Lizzie Kenney, his wife, to Robt. L. Tomlin, trustee for the Daviess County Savings Association, dated August 28th, 1874; at page 161, trust-deeds, record K, there is recorded a deed of trust given by Patrick S. Kenney to Robt. L. Tomlin, trustee for Daviess

County Savings Association, dated May 24th, 1875; at page 74, trust-deeds, record K, there is recorded a deed of trust given by Patrick S. Kenney (S. Kenney) and Elizabeth Kenney, his wife, to Robert L. Tomlin, trustee for Daviess County Savings Association, dated Sept.
208 21, 1874; at page 212, trust-deeds, record K, there is recorded a deed of trust given by Patrick S. Kenney and wife, Elizabeth Kenney, to William C. Gillihan and Samuel T. Brossius, trustees for the Daviess County Savings Association, dated 1st, 1876; at page 183, deeds of trust record, letter G, there is recorded a deed of trust given by P. S. Kenney and Elizabeth A. Kenney, his wife, to Thomas Culligan, trustee for James D. Powers, dated 26th day of Feb'y, 1873.

Interrogatory 3. You will now take said deeds of trust in the order named and give the book and page of record on which the same is to be found, the date of each deed, the time when recorded, the parties to the same, the lands described in each, the amount secured by each, the rate of interest, and then give all entries on the margin of the record, including assignments and acknowledgement of satisfaction, such marginal entries being given in the very words as appear on the margin, and literal quotation. Answer fully.

Answer to interrog. 3. The first deed of trust mentioned in answer to interrogatory No. 2 herein is recorded in "deeds of trust record," book K, page 84, now in the recorder's office of Caldwell County, Missouri; is dated February 8th, 1872, and was filed for record the 10th day of Feb'y, 1872; and was given by P. S. Kenney and Elizabeth Kenney, his wife, to M. A. Low, trustee for Leslie P. Barnum, and conveys the SE. quarter of section No. 3, & the NW. quarter of NE. quarter & N. half NW. quarter of section No. 10, and NE. quarter NE. quarter of section No. 9, in township No. 57, of range No. 29, Caldwell County, Missouri, containing 320 acres, more or less. The amount secured by said deed of trust is $3,000.00; the rate of interest on same ten per cent. per annum from date, and
209 if not paid annually to become as principal and bear the same rate of interest.

On the margin of the record of this deed of trust I find an entry of writing in words and figures as follows:

I hereby acknowledge satisfaction of the debt and interest secured by this deed of trust, this August 6th, 1879.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of Leslie P. Barnum and Mary Barnum.

Attest:

WINFIELD MILLER, *Rec.*,
By J. A. KENDALL, *D. R.*

The second deed of trust mentioned in answer to interrogatory No. 2 herein is recorded in trust-deeds, book K, page 3, now in the recorder's office of Caldwell County, Missouri; is dated Nov. 17, 1873, and was filed for record Nov. 17th, 1873, at 3 o'clock p. m.; was given by P. S. Kenney to C. S. McLaughlin, trustee for Solomon Musser, and conveys the E. half of NW. quarter and W. half NE. quarter, all in section No. 9, and the south half of section No. 4, all in township No. 57 and range

No. 29, Caldwell County, Missouri. The amount secured by this deed of trust is $2,112.52; no rate of interest specified.

On the margin of the record of this deed of trust I find an entry of writing in words and figures as follows:

I hereby acknowledge full satisfaction of the debt and interest secured by this trust-deed, this August 6th, 1879.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of Solomon Musser.

Attest:

210 *Attest:*

WINFIELD MILLER, *Rec.*,
By J. A. KENDALL, *D. R.*

The third deed of trust mentioned in answer to interrogatory No 2 herein is recorded in trust-deeds, book K, page 15, now in the recordes's office of Caldwell County, Missouri; is dated Dec. 20th, 1873, and was filed for record Jan'y 8th, 1874, at 1 o'clock p. m.; was given by Patrick S. Kenney and Elizabeth A. Kenney, his wife, to John Doolan, trustee for Nicholas Quirk, and conveys the SE. quarter of section 3 and E. half NE. quarter section 10, in township No. 57, range 29, Caldwell County, Missouri. The amount secured by this deed of trust is $1,650, with interest at the rate of ten per cent. per annum. and compounded if not paid annually. Note secured bears even date with deed of trust.

On margin of the record of this deed of trust I find an entry of writing in words and figures as follows:

I hereby acknowledge full satisfaction of the debt and interest secured by this deed of trust, this Aug. 6th, 1879.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of N. Quirk.

Attest:

WINFIELD MILLER, *Rec.*,
By J. A. KENDALL, *D. R.*

The fourth deed of trust mentioned in answer to interrogatory No. 2 herein is recorded in trust-deeds, book K, page 67; is dated August 28th, 1874; was filed for record Sept. 3d, 1874, at 9 o'clock 30 min. a. m.; was given by Patrick S. Kenney and Lizzie Kenney, his wife, to Robert L. Tomlin, trustee for the Daviess County Savings Association, and conveys the S. half sec. No. 3 & the S. half sec. No. 4, all in township No. 57, range No. 29, in Caldwell County, Missouri, containing 640 acres,
211 more or less. The amount secured by this deed of trust is $5,036.80, with interest at the rate of ten per cent. per annum from maturity. The note secured by this tr. deed bears date Aug. 28th, 1874, due in twelve months from said date.

On the margin of the record of this deed of trust I find an entry of writing in words and figures as follows:

I hereby acknowledge full satisfaction of the debt and interest secured by this trust-deed, this August 6th, 1879.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WINFIELD MILLER, *Rec.*,
By J. A. KENDALL, *D. R.*

The fifth deed of trust mentioned in answer to interrogatory No. 2 herein is recorded in trust-deeds, book K, page 161; is dated May 24th, 1875, at 10 o'clock & 40 min. a. m.; was given by Patrick S. Kenney to Robt. L. Tomlin, trustee for Daviess County Savings Association, and conveys the S. half section 4, the E. half section 9, & the E. half NW. quarter section 9, also N. half sec. 10, also the NE. quarter NW. quarter sec. 10, all in township 57, of range 29, Caldwell County, Missouri, containing 1,080 acres, more or less. The amount secured by this mortgage is $8,013.03, with ten per cent. interest from maturity. The note evidencing said debt bears date May 24th, 1875, and falls due Nov. 24th, 1875.

On the margin of the record of this deed of trust I find an entry of writing in words and figures following:

I hereby acknowledge full satisfaction of the debt and interest secured by this deed of trust, this August 6th, 1879.

R. L. TOMLIN,
212 *Cashier Daviess County Savings Association.*

Attest:

WINFIELD MILLER, *Rec.*,
By J. A. KENDALL, *D. R.*

The sixth deed of trust mentioned in answer to interrogatory 2 herein is recorded in trust-deeds, book K, page 74; is dated Sept. 29, 1874; was filed for record October 2nd, 1874, at 11 o'clock & 40 minutes a. m.; was given by Patrick S. Kenney and Elizabeth Kenney, his wife, to Robert L. Tomlin, trustee for the Daviess County Savings Association, and conveys the N. half of sec. 10 & the N. half of sec. 4, all in township 57, range 29, Caldwell County, Missouri, containing 640 acres. The amount secured by this mortgage or trust-deed is $5,792.20, as evidenced by two promissory notes, dated Aug. 28th, 1874, the 1st of said notes, due Oct. 10th, 1874, for $755.40, with ten per cent. interest per annum from date of maturity; the second of said notes, due twelve months after date, for $5,036.80, with ten per cent. interest per annum from maturity.

On the margin of the record of this deed of trust I find an entry of writing in words and figures as follows:

I hereby acknowledge full satisfaction of this deed of trust, this August 6th, 1879.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WINFIELD MILLER, *Rec.*,
By J. A. KENDALL, *D. R.*

The seventh deed of trust mentioned in answer to interrogatory No. 2 herein is recorded in trust-deeds, book K, page 212, dated Apr. 1st, 1876; was filed for record Apr. 13th, 1876, at 3.30 p. m.; was given by Patrick S. Kenney and Elizabeth Kenney, his wife, to Wm. C. Gillihan & Samuel T. Brossius, trustees for Daviess County Sav-
213 vings Association, and conveys the S. half sec. 3, the S. half sec. 4, & N. half NE. quarter & SW. quarter NE. quarter & E. half NW. quarter section 9, the E. half NE. quarter & NW. quarter of NE. quarter & N. half NW. quarter sec. 10, all in township 57, range No. 29, Caldwell County, Missouri, containing in all $1,055\frac{7}{100}$ acres; also the S. half NW. quarter & SW. quarter NE. quarter sec. 10 & NW. quarter sec. 9, all in township 57, range 29, Caldwell County, Missouri, containing in all $1,217\frac{07}{100}$ acres. The amount secured by this deed of trust is $4,889.65, evidenced by two promissory notes dated April 1st, 1876, the first of said notes, due Sept. 1st, 1876, for $2,444.83, with ten per cent. interest from maturity; the 2nd of said notes, due Jan'y 1st, 1877, for $2,444.83, with ten per cent. interest from maturity.

On the margin of the record of this deed of trust I find an entry of writing in words and figures as follows:

I hereby acknowledge full satisfaction of the debt and interest secured by this deed of trust, this Aug. 6th, 1879.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WINFIELD MILLER, *Rec.*,
By J. A. KENDALL, *D. R.*

The eighth deed of trust mentioned in answer to interrogatory No. 2 herein is recorded in deeds of trust record, book G, at page 183; is dated 26th day of Feb'y, 1873; was filed for record the 6th day of March, 1873, at 10 o'clock a. m.; was given by Patrick S. Kenney and Elizabeth Kenney, his wife, to Thomas Culligan, trustee for James D. Power, and conveys the S. half of section 3, also the E. half SE. quarter sec. 4, containing 402 acres, all in township 57, range 29, Caldwell County,
Missouri. The amount secured by this deed of trust is $5,000.00,
214 evidenced by one promissory note of even date with deed of trust, bearing interest at the rate two per cent. per annum from date, interest to be compounded if not paid annually.

On margin of the record of this deed of trust I find an entry of writing in words and figures as follows:

"For deed of release see record No. 10, page 30," a certified copy of which said deed of release is hereto attached and marked "Exhibit A."

Interrogatory 4. I will now ask you to examine the records of the circuit court of Caldwell County, Mo., and ask you if you find these two judgments in favor of the Bank of Breckenridge, Mo., against P. S. Kenney, and also judgment in favor of one Ryan against P. S. Kenney? Answer fully.

Answer to interrogatory 4. I have examined the records of the circuit court of Caldwell County, Missouri, and find two judgments in favor of

the Exchange Bank of Breckenridge against Patrick S. Kenney et al., and one judgment in favor of Thomas Ryan against Patrick S. Kenney.

It now being 6 o'clock p. m. of this 11th day of July, 1881, the further examination of the said witness Jeff Davis is continued until 8 o'clock to-morrow morning, July 12, 1881.

KINGSTON, MO., *July 12th*, 1881—8 o'clock a. m.

The further examination of the above-named witness, Jeff Davis, is now continued.

Interrogatory 5. If you say you find such judgments, you will now please give the date of the same, the names of the parties thereto, the amount of the same, the interest borne by each, and all credits, and payments, and entries of satisfaction in the language given in the record; you will also give the name of the record, its number or letter, and page. Answer fully.

215 Ans. to interrog. 5. I have carefully examined the records of the circuit court of Caldwell County, and find therein two judgments in favor of the Exchange Bank of Breckinridge. The first of said judgments is against John Kenney and Patrick S. Kenney, and is found at pages 59 & 60, circuit court record, letter G. Said judgment was rendered by the Caldwell County circuit court, at its June term for the year 1875, on Monday, July 5th, 1875. The amount of said judgment is 515.45 $, and bears ten per cent. interest from date of rendition.

The second of said judgments is against John Kenney, Edmond Kenney, and Patrick S. Kenney, and is found at page 60, circuit court record, letter G. Said judgment was rendered by said Caldwell circuit at its June term, 1875, on the 5th day of July, 1875. The amount of said is $614.50, and bears interest at the rate of ten per cent. from the date of rendition.

On the margin of said circuit court record, letter G, and opposite to the above-named judgments, I find the following indorsements in writing, in words and figures to wit:

The two within judgments against John Kenney et al. are entitled to a credit of nine hundred and ninety dollars ($990.00).

April 25th, 1879.

SAM. RUSSEL,
Pres't Ex. B'k.

Attest:

WINFIELD MILLER, *Clerk.*

Received of Winfield Miller, circuit clerk, six hundred twenty-three & 13 dollars, in full payment of these judgments.

August 13th, 1879.

SAM. RUSSEL,
Pres't Ex. B'k.

I have also examined the circuit court records of Caldwell County, Missouri, and find therein, at page 159, letter G, of said records, a judgment in favor of Thomas Ryan and against Patrick S. Kenney, which

216 judgment was rendered by the said circuit court of Caldwell County,

at its October term for the year 1875, on Monday, 1st day of Nov., 1875. The amount of this judgment is $775.00, and bears interest at the rate of ten per cent. from date of rendition.

On the margin of said circuit court record, letter G, and opposite the last above-named judgment, I find the following indorsements in writing, in words and figures to wit:

I, Winfield Miller, clerk of the circuit court, acknowledge the receipt of $1,066.00 as payment in full of this judgment, this 6th day of August, 1879.

WINFIELD MILLER, *Clerk.*

Received of Winfield Miller, clerk, the sum of $1,066.00, in full of this judgment.

August 8th, 1879.

THOMAS RYAN,
By LOW & DILLEY,
His Attorneys.

Attest:

WINFIELD MILLER, *Clerk.*

Interrog. 6. State fully all you may know about the payment of these different liens and the cancellation of the deeds of trust, under whose directions the payments on the judgments were made, and all you may know about the facts leading to or connected with the cancellation of said deeds of trust. State fully.

Ans. to interrog. 6. I was present in the circuit clerk's office Aug. 6th, 1879, at the time the above-mentioned judgments were paid to Winfield Miller, circuit clerk, and when the deeds of trust above referred to were cancelled and entered satisfied on the records, as hereinabove stated. Mr. Lew E. Darrow, under the direction of Mr. R. L. Tomlin, cash. Daviess Co. Savings Association, paid off the judgments above mentioned, by draft of about $1,600 or $1,700. I understood from the conversation
217 of Mr. Darrow and Mr. Tomlin that all liens on Kenney's lands were to be discharged, and after the liens were removed the balance remaining out of the $10,000.00 loan, after paying such liens as had to be paid at the time, was to be paid to the Daviess County Savings Association, and with that view in end Mr. R. L. Tomlin, as cashier of said Daviess County Savings Association, was to enter *enter* satisfaction of all liens held by said association against P. S. Kenney, and to take a second deed of trust on Kenney's lands for the balance due it from Kenney after crediting the amount paid by Darrow to it, said deed of trust to be a second and inferior lien to the deed of trust given by P. S. Kenney and wife to Lew E. Darrow, trustee for plaintiff, and also to a trust-deed given to David McNair for the use of George W. Frank & Darrow. Mr. Darrow then, at the instance of Mr. Tomlin, paid the balance on the three judgments mentioned in this deposition of Mr. Tomlin, made the entries of satisfactions of deeds of trust, which entries I have heretofore mentioned, and which are copied hereinbefore. Mr. Darrow then filed the two deeds of trust, one to plaintiffs as beneficiaries, and one to Frank & Darrow, beneficiaries as first liens on the lands of the said P. S. Kenney.

Mr. R. L. Tomlin then filed a deed of trust given by P. S. Kenney & wife to him, as trustee of the Daviess County Savings Association, which deed of trust has the following condition: "This trust-deed is made subject to a trust-deed to Lew E. Darrow, dated July 1st, 1879, and also to a trust deed to David W. McNair, dated July 1st, 1879, so far as it relates to lands included in said two trust-deeds, both of which are of record in the office of the recorder of deeds for Caldwell County, Missouri."

Said deed of trust from which the above statement or condition
218 is copied is recorded at page 156, deed of trust record, letter N, in the recorder's office of Caldwell County, Missouri.

Cross-interrogatories:

Cross-interrog. No. 1. Are you acquainted with the lands of P. S. Kenney described in the several deeds of trust referred to in your answers to plaintiffs' interrogatories; and, if yes, please state was the value of said lands per acre on or about June the 30th, 1879?

Ans. to cross-int. No. 1. I have often seen the lands referred to belonging to P. S. Kenney; I do not remember of hearing of any lands being sold about June 30th, 1879, in that locality, but from character of improvements, being very good, and located near railroad depot, I think that the land at that time would have sold in market from $20 to $25 per acre.

Cross-interrog. No. 2. State about what was the value of said lands per acre on or about the 30th day of June, 1879, exclusive of the improvements, and state about what was the value of the improvements on said lands at said date.

Ans. to cross-interrog. No 2. The lands, considered as wild, unimproved lands, I think would have sold from $10 to $12 per acre. The improvements, taking into consideration the fences, state of cultivation, buildings, wells, orchard, and other improvements, could not have been placed on the lands at that time for less than $10 or $12 per acre.

Cross-interrog. No. 3. State upon which quarter section of said lands, according to United States survey, the dwelling-house and outhouses of said P. S. Kenney are situated, and state what was the value of said dwelling-house and outhouses on or about the 30th day of June, 1879.

Ans. to cross-interrog. No. 3. The dwelling-house is situated
219 upon the southeast quarter of section No. 3, township 57, range 29, also the outhouses are situated on same land. The dwelling-house, I think, is the best constructed and planned house in the county, being large and commodious. Outbuildings also good. The whole could not have been placed on the lands in June, 1879, for less than $8,000.00 or $10,000.00, I don't think.

JEFF DAVIS.

Subscribed and sworn to before me this 12th day of July, 1881.

WINFIELD MILLER,
Clerk Cir. Court of Caldwell Co., Mo.

STATE OF MISSOURI,
County of Caldwell, ss:

I, Winfield Miller, clerk of the circuit court of Caldwell County, Mo., do certify that in pursuance of the annexed commission, came before me,

at Kingston, in the county and State aforesaid, Jeff Davis, who was by me sworn to testify the whole truth, of his knowledge, touching the matter in controversy aforesaid, and that he was examined, and that his examination reduced to writing and subscribed and sworn to in my presence on the 12th day of July, 1881, and that said deposition was taken and examination made on the 11th & 12th days of July, respectively, between the hours of 8 o'clock forenoon and 6 o'clock afternoon of said days; and that said Jeff Davis is a resident of Kingston, Mo.; and that said examination, together with the commission authorizing the same, is now returned.

Witness my hand as clerk and the seal of our said circuit court. Done at office, in Kingston, this 12th day of July, A. D. 1881.

WINFIELD MILLER, *Clerk.*

220 EXHIBIT A.—*Quitclaim deed.*

This indenture, made on the fifteenth day of September, A. D. one thousand eight hundred and seventy-nine, by and between James D. Power, of the county of St. Francisco and State of Missouri, party of the first part, and Patrick S. Kenney, of the county of Caldwell and State of Missouri, party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents remise, release, and forever quitclaim unto the said party of the second part the following-described lots, tracts, or parcels of land lying, being, and situate in the county of Caldwell and State of Missouri, to wit: The south half of section three (3) and the east half of the southeast quarter of section four (4) in township fifty-seven (57), range twenty-nine (29).

(This deed of quitclaim being made in release of and satisfaction for a certain deed of trust dated the 26th day of Feb'y, 1873, recorded in the recorder's office within and for the county of Caldwell aforesaid, in deed-book G, at page 183.)

To have and to hold the same with all the rights, immunities, privileges, and appurtenances thereto belonging, unto the said party of the second part and his heirs and assigns forever, so that neither the said party of the first part nor his heirs, nor any other person or persons for him or in his name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises or any part thereof, but they, and
221 every one of them, shall by these presents be excluded and forever barred.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES D. POWER. [SEAL.]

Signed, sealed, and delivered in the presence of us.
A. M. TYLER.

STATE OF MISSOURI,
County of Jefferson, ss:

Be it remembered that on this 22d day of September, A. D. 1879, be-

fore the undersigned, a notary public within and for the county of Jefferson aforesaid, personally came James D. Powers, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned. And the said James D. Powers further declared himself to be single and unmarried.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in De Soto, Mo., the day and year above written.

My commission as notary will expire Oct. 25th, 1881.

[SEAL.] ALBERT M. TYLER,
Notary Public.

STATE OF MISSOURI,
County of Caldwell, ss:

I, Winfield Miller, clerk of the circuit court and ex officio recorder of deeds in and for said county, hereby certify that the above is a true copy of the original deed as the same appears of record in book 10 at page 30 of quitclaim records in my office.

Witness my hand as clerk of said court and ex officio recorder,
222 and the seal of my office. Done at office in Kingston this 12th day of July, 1881.

[SEAL.] WINFIELD MILLER, *Clerk.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:

The President of the United States of America to Winfield Miller, clerk of the circuit court of Caldwell County, Missouri, greeting:

Know ye that, in confidence of your prudence and fidelity, we do by these presents authorize you to cause to come before you Jeff Davis, to be examined as a witness in a cause pending in our circuit court of the United States for the western division of the western district of Missouri, wherein Albert S. Webb et al. are plaintiffs and Daviess Co. Savings Association et al. are defendants, at such time and place as shall be named to you for that purpose by the said plaintiffs, or their attorneys or agents.

And we do command you to examine the said witness, under oath or solemn affirmation first taken before you, upon the interrogatories and cross-interrogatories hereto annexed, touching his knowledge of anything relating to the said matter in controversy between the said parties, and reduce such examination to writing; and when you shall have taken such examination you are to cause the witness to sign the same; and to such examination, at the foot thereof, you are to append your certificate, setting forth the facts that such examination was subscribed and sworn to, or affirmed, by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven, or referred to by witness, you are to describe the same in the examination, or cause it to be so marked as to establish its identity, and attach the
223 same to such examination; and you will return the same and all exhibits produced to you, annexed hereto, carefully closed up, and under your seal (with the names of said parties litigant endorsed thereon) directed to the clerk of the circuit court of the United States in and for

the western division of the western district of Missouri, at Kansas City, Mo., with all convenient speed.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 18th day of June, A. D. eighteen hundred and eighty-one.

Issued at office, in the city of Kansas, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] H. C. GEISBERG,
Clerk of said Circuit Court,
By WARREN WATSON, *D. C.*

In the United States court, western division of the western district of the State of Missouri, at Kansas City, Missouri.

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
THE DAVIESS COUNTY SAVINGS ASSOCIATION et al., defendants. } No. 337.

The defendants in said cause pray the court to require the officer commissioned to take the deposition of witness Jeff Davis, on behalf of the plaintiffs, to propound the following questions, by way of cross-interrogatories, to said witness, for and on behalf of defendants, to wit:

Int. 1st. Are you acquainted with the lands of P. S. Kenney, described in the several deeds of trust referred to in your answers to plaintiffs' 224 interrogatories? And, if yea, please state what was the value of said lands per acre on or about June 30th, 1879.

Int. No. 2. State about what was the value of said lands per acre on or about the 30th day of June, 1879, exclusive of the improvements, and state about what was the value of the improvements on said lands at said date.

Int. 3rd. State upon which quarter section of said lands, according to United States survey, the dwelling-house and outhouses of said P. S. Kenney are situated, and state what was the value of said dwelling-house and outhouses on or about the 30th day of June, 1879.

JAMES H. B. McFERRAN,
J. A. HOLLIDAY,
Att'ys for Defendants.

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:

I, Henry C. Giesberg, clerk of the circuit court of the United States in and for said division and district, do hereby certify that the foregoing writing is a true copy of the cross-interrogatories in the cause therein named, as fully as the same remain on file at my office.

Witness my hand as clerk and the seal of said court.

Done at office, in the city of Kansas, this 17th day of May, A. D. 1881.

[SEAL.] H. C. GEISBERG, *Clerk,*
By WARREN WATSON,
Deputy Clerk.

ALBERT S. WEBB ET AL.
vs.
ALPHONSO L. MARTIN ET AL.

Interrogatories to be propounded by the officer named in the commission to the witness Jeff Davis.

225 Int. 1st. What is your name, age, place of residence, and occupation?

Int. 2nd. Will you please examine the records in the recorder's office of Caldwel lCounty, Missouri, and among said records state whether or not you there find recorded the following trust-deeds, to wit: A deed given by Patrick S. Kenney to M. A. Low, trustee for Leslie P. Barnum, dated February 8th, 1872; one by the same grantor to C. L. McLaughlin, trustee of Solomon Musser, dated November 17, 1873; one by the same grantor to John Doolan, trustee for Nicholas Quirk, dated December 20, 1873; one by the same grantor, dated August 28th, 1874, to R. L. Tomlin, trustee for the Daviess County Savings Association; one by the same grantor, dated September 21, 1874, to R. L. Tomlin, trustee for the Daviess County Savings Association; one by the same grantor, dated May 24, 1875, to R. L. Tomlin, trustee for the Daviess County Savings Association; and one by the same grantor, dated April 1st, 1876, to Gillihan & Brossius, trustee for the Daviess County Savings Association; also a trust-deed given by said grantor and wife to Thomas Culligan, trustee for J. D. Powers? State fully.

Int. 3rd. You will now take said deeds of trust, in the order named, and give the book and page of the record on which the same is to be found, the date of each deed, the time when recorded, the parties to the same, the lands described in each, the amounts secured by each, the rate of interest, and then give all entries on the margin of the record, inincluding assignments and acknowledgment of satisfaction, such marginal entries being given in the very words as appears on the margin and literal quotation. Answer fully.

Int. 4. I will now ask you to examine the records of the circuit court of Caldwell County, Missouri, and ask you to find there two judg-
226 ments in favor of the Bank of Breckenridge, Mo., against P. S. Kenney, and also judgment in favor of one Ryan against P. S. Kenney. Answer fully.

Int. 5. If you say you find such judgments, you will now please give the date of the same, the names of the parties thereto, the amount of the same, the interest borne by each, and all credits and payments and entries of satisfaction in the language given in the record; you will also give the name of the record, its number or letter, and page. Answer fully.

Int. 6. State fully all you may know about the payment of these different liens and the cancellation of the deeds of trust, under whose directions the payments on the judgments were made, and all you may know about the facts leading to or connected with the cancellation of said deeds of trust. State fully.

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:.

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said division and district, do hereby certify that the foregoing writing is a true copy of the interrogatories to be propounded to Jeff Davis as fully as the same remains on file in my office.

Witness my hand as clerk and the seal of said court. Done at office, in the city of Kansas, this 16th day of May, A. D. 1881.

[SEAL.] H. C. GEISBERG, *Clerk*,
By WARREN WATSON,
Deputy Clerk.

227 *Agreement to take the deposition of the person hereinafter named.*

ALBERT S. WEBB ET AL., COMPLAINANTS,
vs.
THE DAVIESS COUNTY SAVINGS ASSOCIATION et al., DEFENDANTS. } In chancery.

In the United States circuit court, western division of the western district of the State of Missouri, at Kansas City.

In the above-entitled cause it is hereby agreed that the deposition of Robert L. Tomlin may be taken before Boyd Dudley, esq., a notary public within and for the county of Daviess and State of Missouri, who is hereby agreed upon as a commissioner for such purpose, said deposition to be taken on the interrogatories and cross-interrogatories hereto attached, at the law office of said Boyd Dudley, in the city of Gallatin, in the county of Daviess, and State of Missouri, on the 15th day of August, 1881, or at any time before said date, and if not completed on that day the taking thereof to be continued from day to day till completed, the same to be used as evidence on the trial of the above cause on the part of the defendants. The notice required, either by the law or any former stipulation filed in this cause to be given to the opposite party for taking of depositions and the issuing of commission from the office of the clerk of said court, as well as all objections and exceptions to the time of taking said deposition, are hereby waived. This deposition shall be subjected upon hearing to objections for incompetency, irrelevancy, immateriality, and questions being leading.

STUART BROS., *Att'ys for Complainants.*
228 WATERS, McFERRAN & HOLLIDAY,
Attorneys for Defendants.

In the United States circuit court for the western division of the western district of Missouri.

ALBERT S. WEBB ET AL., complainants,
vs.
THE DAVIESS COUNTY SAVINGS ASSOCIATION et al., defendants.
} In chancery.

Interrogatories to be propounded to R. L. Tomlin under the annexed agreement & notice on behalf of the defendants in the above-entitled cause.

Interrogatory first. What is your name, age, occupation, and your present residence?

Inter. second. Are you acquainted with the parties to this suit, and if so, when, where, and how long did you know them?

Inter. third. Please state what position you held, if any, in the defendant corporation, the Daviess County Savings Association of Gallatin, Daviess Co., Mo., by what authority you held the same, and for how long a time you occupied that position and discharged its duties.

Inter. fourth. If, in answer to inter. third, you state you were cashier of the above Daviess County Savings Association, please state whether you at any time held or discharged the duties of any other position with respect to said association at any time, and, if so, what that position was and what duties you discharged.

Inter. fifth. Who were the officers of the Daviess County Savings Association during the time you were its cashier?

229 Inter. sixth. Was there any such officer as general manager or general agent of said association; and, if so, who was such manager or agent?

Inter. seventh. What authority, if any, did you have to discharge any duties with respect to said corporation except the duties of cashier?

Inter. eighth. Were you present at the time the loan by complainants to Patrick S. Kenney was consum'ated, and at the time the deed of trust by Kinney to them was executed? And, if so, please state who was present representing complainant; whether at that time any run was being made or threatened upon the said savings association; whether or not at that time said association was in great or pressing need of money for any purpose, and what position at that time you held with respect to said association, and whether you were present at the place where said loan to Kinney was being consum'ated by direction of the said corporation or on your own motion.

Inter. ninth. Please state whether at the time you entered the pretended satisfaction of the various deeds of trust held by said association on Kenney's real estate in Caldwell Co., Mo., whether or not the debts secured by said deeds of trust of either of them, or any part thereof, had been paid, or whether or not at that time any arrangement had been or was made for the payment of the same; and, if so, state particularly as to what payment had been made, or was to be made, and whether or not the complainants or their agent and the said Kenney, or either or any of them knew the circumstances attending said pretended entries of satisfaction, and the reason why the same were entered.

230 Inter. tenth. To whom did Kenney pay the money he borrowed from complainant? And state whether or not the deed of trust and the judgments paid thereout belonged to said association, and state whether or not complainants knew who were the owners of said deeds of trust and judgments.

Inter. eleventh. Please state whether or not the complainants or their agent, at the time they loaned Kenney the sum of $10,000, and at the time they paid over the same on said loan, knew that the deeds of trust held by said savings association were unpaid, and whether or not they knew that said pretended entries of satisfaction of said deeds of trust were made without payment or satisfaction.

Inter. twelfth. State if you know what position James H. B. McFerran occupied with respect to said savings association, and where he and the various officers of the said association resided in June, 1879.

Inter. thirteenth. What examination, investigation, or inquiry, if any, the plaintiffs made as to or into the extent of your authority as cashier of the Daviess County Savings Association as to your connection or participation in the ordinary course of business of said defendant at or before the making of the pretended contract and transaction in relation to plaintiffs' loan of ten thousand dollars to one P. S. Kenney, and the pretended release of said Kenney's indebtedness and liens to defendant on the said Kenney's real estate made by you on the 29th day of June, 1879.

Inter. fourteenth. What inquiry, if any, was made by the plaintiffs or their agent in relation to the officers of said defendant, other that yourself, before or at the time of making said pretended contract of satis-

231 faction referred to in the preceding interrogatory?

Inter. fifteenth. State whether or not the plaintiffs, by themselves or agents, were ever at the defendant's place of business at Gallatin, Missouri, at or before the pretended contract & transaction was entered into, and what inquiry, if any, they made in relation to the course of business of said defendant, and in relation to your receiving payment and entering deeds of trust satisfied, as its cashier, belonging to the defendant, other than those in controversy.

Inter. sixteenth. State whether or not, and what, if anything, was the course of business of the defendant in relation to entering debts due it paid and its liens satisfied. Was it or was it not the course of business of defendant to enter indebtedness due it paid and its securities satisfied only on receiving actual payment and satisfaction, or was it the course of business of defendant to enter indebtedness due it paid and its securities satisfied without actual payment or satisfaction in matters other that the pretended contract & transaction referred to in the 13th interrogatory?

Inter. seventeenth. What consideration, if any, passed from the plaintiffs to the defendants for the pretended contract and transaction referred to in interrogatory 13? State what money, if any, the defendant received of the proceeds of the loan by plaintiffs to said P. S. Kenney, on whose account was it paid to and received by the defendant, the plaintiffs, or said Kenney.

Inter. eighteenth. What notes and deeds of trust, if any, on P. S. Kenney's lands were made by said Kenney and wife, or either, to the plaintiffs and one Lew E. Darrow, and one George W. Frank & Darrow, and on what account and for what consideration?

232 Inter. nineteenth. State whether or not plaintiffs' deed of trust from Kenney & wife was made a first lien on all of said Kenney's lands, and the deed of trust from Kenney & wife to Lew E. Darrow or Frank & Darrow was made a second lien on all of said real estate superior to all liens thereon except the plaintiffs', and the deed of trust from Kenney & wife to the defendant to secure the sum of about thirty-six thousand five hundred dollars was made a third lien on all of said lands, junior and inferior to the liens aforesaid, with the knowledge of the plaintiffs and as a part of and in consum'ation of the pretended contract & transaction sought to be enforced by plaintiffs in this case & referred to in interrogatory 13.

Inter. twentieth. If there is anything you know which would be materi'l to the issues herein, please state the same as particularly as if particularly interrogated in relation thereto.

WATERS, McFERRAN & HOLLIDAY,
Attorneys for Defendants.

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:

Be it remembered that on this 15th day of August, A. D. 1881, I, Boyd Dudley, a notary public and commissioner of the circuit court of the United States in and for said district, duly agreed upon by the parties herein as such commissioner, as per agreement hereto attached, did, under and by virtue of said agreement authorizing me to take the deposition of Robert L. Tomlin, cause to come before me at my law office in the city of Gallatin, in the county of Daviess, and State of Missouri, between the hours of nine o'clock a. m. and five o'clock p. m. of that day, the
233 said Robert L. Tomlin, to be examined as a witness in a cause pending in the circuit court of the United States for the western division of the western district of Missouri, in chancery, wherein Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, are complainants, and Alphonzo L. Martin, William W. Clevenger, and the Daviess County Savings Association are defendants. And the said Robert L. Tomlin, of lawful age, being by me cautioned and sworn to testify the whole truth and carefully examined on the interrogatories hereto attached, 'pon his oath deposeth and saith:

Interrogatory first. What is your name, age, occupation, and your present residence?

Answer. My name is Robert L. Tomlin; I am forty-three years of age; am not in business at present; my present residence is Gallatin, Daviess County, Missouri.

Interrogatory second. Are you acquainted with the parties to this suit; and, if so, when, where, and how long did you know them?

Answer. I am not acquainted with plaintiffs; don't think I have met any of them. I am acquainted with the officers and stockholders of the Daviess County Savings Association, and have known them for ten years at Gallatin, Missouri, from about 1871 to the present time. I do not know defendant Clevenger. Have known defendant Martin for several years.

Interrogatory third. Please state what position, if any, you held in the defendant corporation, the Daviess County Savings Association of Galla-

tin, Daviess County, Missouri, by what authority you held the same, and for how long a time you occupied that position and discharged its duties.

Answer. On June 10th, 1870, I was appointed acting cashier
234 of the defendant bank, the Daviess County Savings Association, and served as such until January 1st, 1872, at which time I was elected cashier, and served as such until January 1st, 1881. I held the position of cashier by the authority of a vote of a board of directors, and discharged the duties of that position for a period of nine years—from January first, 1872, to January 1st, 1881.

Interrogatory fourth. If in answer to interrogatory third you state you were cashier of the above Daviess County Savings Association, please state whether you at any other time held or discharged the duties of any other position with respect to said association at any time; and, if so, what that position was, and what duties you discharged.

Answer. I never occupied any other relation to the Daviess County Savings Association except that of acting cashier and cashier, as stated above.

Interrogatory fifth. Who were the officers of the Daviess County Savings Association during the time you were its cashier?

Answer. James McFerran was president for most of the time, and James Hemry, Jno. A. Tuggle, James McFerran, Wm. M. Givens, and for a portion of the time Henry C. McDougal and Edward H. Smith were directors.

Interrogatory sixth. Was there any such officer as general manager or general agent of said association; and, if so, who was such manager or agent?

Answer. There was no such officer as general manager, agent, or director designated as such, but James McFerran, by common consent of the directors and stockholders, exercised all the authority that a general manager, agent, or director might have used whenever he chose to do so,
235 and as in his judgment circumstances required from time to time.

Interrogatory seventh. What authority, if any, did you have to discharge any duties with respect to said corporation, except the duties of cashier?

Answer. I had no authority whatever in respect to any of the duties of the corporation except that attached to the office of cashier.

Interrogatory eighth. Were you present at the time the loan by complainants to Patrick S. Kenney was consum'ated, and *at* the deed of trust by Kinney to them was executed? And, if so, please state who was present representing complainants; whether, at that time, any run was being made or threatened upon the said savings association; whether or not, at that time, the association was in great or pressing need of money for any purpose, and what position at that time you held with respect to said association, and whether you were present at the place where said loan to Kinney was being consum'ated by direction of the said corporation or on your own motion.

Answer. I was present when the deed of trust was executed by Kenney to the complainants, and was present when the loan was consum'ated by the delivery of the deed of trust. Lew E. Darrow, of Geo. W. Frank & Darrow, loan agents, of Corning, Iowa, was present representing the complainants. There was at that time no run being made upon the said asso-

ciation, or none threatened. The association at that time was indebted to Daviess County in the sum of $. The county court had requested that this sum be paid, and while the bank could have used that amount of money there was no great pressing need of money, and no urgency on the part of the county court in its demands. At that time I was cashier
of the association. I consulted no one in reference to my pres-
236 ence at the consum'ation of the loan to Kenney, but went of my
own accord.

Interrogatory ninth. Please state whether at the time you entered the pretended satisfaction of the various deeds of trust held by said association of Kinney's real estate, in Caldwell County, Missouri—whether or not the debts secured by said deeds of trust, or either of them, or any part thereof, had been paid, or whether or not at that time any arrangement had been or was made for the payment of the same; and, if so, state particularly as to what payment had been made or was to be made, and whether or not the complainants or their agent and the said Kenney, or either or any of them, knew the circumstances attending said pretended entries of satisfaction, and the reasons why the same were entered.

Answer. At the time of the entry of satisfaction of all deeds of trust held by the association on Kenney's real estate by me, none of the debts secured thereby, or any part of them, had been paid upon completing of entries of satisfaction by me; $3,000, being a part of the money loaned by complainants to Kenney, was handed to me by Lew E. Darrow, complainants' agent, at the request of P. S. Kenney, which sum was applied by me in part payment of the existing indebtedness of P. S. Kinney to the Daviess County Savings Association; at the same time P. S. Kinney executed to the Daviess County Savings Association a new deed of trust conveying the same land as security for his indebtedness, which last deed of trust was filed for record immediately after the cancellation of the old deed of trust and entry of satisfaction thereof, and the filing of the two deeds of trust to the complainants. It was understood between Lew E. Darrow and myself,
Mr. Darrow representing the complainants and P. S. Kenney,
237 that the deed of trust in favor of complainants for $10,000, and the deed of trust for $1,000, wherein Geo. W. Frank and Darrow are the beneficiaries, should be filed before, and should take precedence as liens on all the lan's of P. S. Kenney over the new deed filed at the time by me in favor of the Daviess County Savings Association. The circumstances attending the entire transaction were talked over by Mr. Darrow, for complainants, Mr. Kenney, and myself, and the reasons for the entry of satisfaction were known to them at that time.

Interrogatory tenth. To whom did Kenney pay the money he borrowed from the complainants, and state whether or not the deed of trust and judgments paid thereout belonged to said association, and state whether or not complainants knew who were the owners of said deeds of trust and judgments.

Answer. By direction of P. S. Kenney, Lew E. Darrow paid to the clerk of the circuit court of Caldwell County a balance due on a judgment against P. S. Kenney in favor of the Exchange Bank, at Breckenridge, Mo.; also a judgment against P. S. Kenney in favor of the estate of Thomas Ryan, deceased, with the costs in said judgment; also by direction of P. S. Kenney, Lew E. Darrow retained money of the proposed loan amount-

ing to $5,200.00, for the purpose of paying a debt due James D. Powers by P. S. Kenney, and secured by deed of trust upon a portion of the lands of P. S. Kenney heretofore mentioned, which debt was afterward paid Powers by Darrow in pursuance of Kenney's directions, and the balance of said loan was paid to me, as above stated, by Darrow at the request of Kinney, and was by me applied as a credit on the indebtedness of P. S. Kenney to the Daviess County Savings Association. The deed of
238 trust to Powers did not belong to the association, neither did the Ryan or Breckenridge bank judgments against P. S. Kenney; complainants, through their agent, Lew E. Darrow, knew who owned the debt secured by deed of trust mentioned, and the judgments, and said Darraw saw the record of the judgments and deed of trust, and knew that the bank had no interest in those claims.

Interrogatory eleventh. Please state whether or not the complainants or their agent, at the time they loaned Kenney the sum of $10,000.00, & at the time they paid over the same on said loan, knew that the deeds of trust held by said savings association were unpaid, and whether or not they knew that said pretended entries of satisfaction of said deeds of trust were made without payment or satisfaction.

Answer. Lew E. Darrow, agent of complainants, knew that no payments had been made on the amounts secured by the deeds of trust held by the bank at the time the loan was made to Kenney, and at the time the entries of satisfaction of said deed of trust was made by me, Darrow knew that the debts secured by those deeds of trust had not been paid.

Interrogatory twelfth. State, if you know, what position James H. B. McFerran occupied with respect to said savings association, and where he and the various officers of said association resided in June, 1879.

Answer. James H. B. McFerran was a chief stockholder of the bank in June, 1879; he resided in Colorado Springs, in the State of Colorado; he was neither an officer or director of the bank, the laws of Missouri excluding him from such position by reason of his being a non-resident of Missouri. Col. McFerran was in frequent correspondence with me in reference to the business of the bank; was receiving from me semi-monthly statements of the condition of the bank, and was understood by all the directors and stockholders to be supervising and looking after the welfare
239 of the institution. All the officers and directors of the bank resided in Daviess County, Missouri, in June, 1879.

Interrogatory thirteenth. What examination, investigation, or inquiry, if any, the plaintiffs made as to or into the extent of your authority as cashier of the Daviess County Savings Association, as to your connection or participation in the ordinary course of business of said defendant at or before the making of the pretended contract and transaction in relation to the plaintiffs' loan of $10,000 to one P. S. Kenney and the pretended release of said Kenney's indebtedness and liens the defendant on the said Kenney's real estate made by you on the 29th day of June, 1879?

Answer. At the time of the making of the loan, and before Lew E. Darrow agreed to make Kinney said loan, said Darrow fully acquainted himself with the condition of the real estate of P. S. Kenney, both in respect to the title thereof and with respect to all existing liens thereupon, and agreed to make said loan to Kenney only upon the condition that said loan should be a first lien upon the lands of said Kenney. In re-

gotiating the condition of Kenney's real estate Lew E. Darrow learned from me that the Daviess County Savings Association was the legal owner and holder of all liens of record upon the lands of P. S. Kenney, excepting the deed of trust in favor of James D. Powers and the judgment in favor of the Exchange Bank of Breckenridge, and the judgment in favor of the estate of Thomas Ryan, heretofore alluded to. Lew E. Darrow inquired of me who would satisfy upon the records the deeds of trust belonging to the Daviess County Sav. Ass'n, in order that he might make
the loan to Kinney and file deeds of trust to secure the same, which
240 should be a first lien upon the lands of Kinney, and I told him that upon the payment of the two judgments herein alluded to, and the deed of trust in favor of Powers herein referred to, out of the money proposed to be loaned to Kinney, and a payment to me of the balance of said loan, into my hands, after the satisfaction of the three debts above referred to, which payments were all to be made by Kenney, or by Darrow at the request of Kenney, I would satisfy all the recorded liens of the land of Kenney of which the Daviess County Savings Association was the owner and holder; and I told Darrow I believed I had the right or authority to make such satisfaction in the way proposed. I do not know whether Darrow made any other examination, investigation, or inquiry as to or into the extent of my authority as cashier of the Daviess County Savings Ass'n, or as to my connection or participation in the ordinary course of business of said bank, either at or before the making of the contract and transaction, in relation to the loan of $10,000 to P. S. Kinney. Darrow learned from me in the course of our conversation in relation to the loan to Kenney that I would take from Kinney a new deed of trust to secure the indebtedness to the Daviess County Savings Ass'n in lieu of the old deeds of trust that I was to satisfy upon the records, and that I would file such new deeds of trust after he had filed deeds of trust to secure the proposed loan of $10,000 to Kinney, but so far as I know, made no inquiry as to my authority to carry out such proposed action further than to inquire of me, as above stated, who would make such satisfaction upon the records.

Interrogatory fourteenth. What inquiry, if any, was made by plaintiffs or their agent, in relation to the officers of said defendant other than yourself before or at the time of making such pretended contract of
241 satisfaction referred to in the preceeding interrogatory?

Answer. Lew E. Darrow, agent of complainants, made no inquiries whatever of me in relation to the officers of the Daviess County Savings Ass'n, other than myself, prior to or at the time of said contract.

Interrogatory fifteenth. State whether or not the plaintiffs, by themselves or agents, were ever at the defendant's place of business, at Gallatin, Mo., at or before the pretended contract and transaction was entered into, and what inquiry, if any, they made in relation to the course of business of said defendant and in relation to your receiving payment and entering deeds of trust satisfied as its cashier belonging to the defendant, other than those in controversy.

Answer. I do not remember having any connection with Mr. Darrow in relation to the loan to P. S. Kenney at the banking-house of the Daviess County Savings Ass'n, but think that everything that passed between Darrow and myself in reference to the making of said loan took place during

a trip to the residence of P. S. Kenney for the purpose, on the part of Lew E. Darrow, of examining and receiving Kenney's lands, I accompanying Darrow on said trip and on the trip to Kingston, the county seat of Caldwell County, at the time the transaction now in controversy was completed. In relation to the Kinney loan nothing was ever said or done at the bank prior to the completion of the transaction in relation to it by Darrow. No inquiry was made by plaintiffs or their agent, Darrow, in relation to the course of business of the bank in reference to the satisfaction of the deeds of trust held by the bank other than the inquiry by Mr. Darrow as to who would satisfy the records of trust-deeds upon Kinney's land in Caldwell County, Missouri, held by the bank.

242 Interrogatory sixteenth. State whether or not and what, if anything, was the course of business of the defendant in relation to entering debts due it paid and its liens satisfied; was it or was it not the business of defendant to enter indebtedness due it paid and its securities satisfied only on receiving actual payment and satisfaction, or was it the course of business of defendant to enter its indebtedness due it paid and its securities satisfied without actual payment or satisfaction in matters other that the pretended contract and transaction referred to in the thirteenth interrogatory?

Answer. It was my custom, as cashier of the bank, to enter satisfaction upon the records of deeds of trust held by the bank upon payment to the bank of the money due thereon, but not otherwise. I do not remember any instance, excepting in the case now in controversy, of having entered satisfaction upon the records of deeds of trust held by the bank for the purpose of allowing new or other liens to be filed which should take precedence of the liens held by the bank, or of entering such satisfaction without actual *pay*payments of the liens satisfied, and such custom of mine was the course of business of the bank, namely, to satisfy no liens without actual payment of the same.

Interrogatory seventeenth. What consideration, if any, passed from the plaintiff to the defendant for the pretended contract and transaction referred to in interrogatory thirteen? State what money, if any, the defendant received of the proceeds of the loan by plaintiff to said P. S. Kenney; on whose account was it paid to and received by defendants, the plaintiffs or said P. S. Kenney?

243 Answer. There was no consideration paid the bank by plaintiffs as an inducement for the making of the contract and transaction referred to in interrogatory thirteenth. Of the proceeds of the loan made to P. S. Kenney by the plaintiffs the bank received $3,000, as previously stated by me, and said money was paid to me as cashier of the bank by Lew E. Darrow, at the direction and request of P. S. Kenney, to apply on the indebtedness of said Kenney to the Daviess County Savings Ass'n.

Interrogatory eighteenth. What notes and deeds of trust on P. S. Kenney's lands, if any, were made by P. S. Kenney & wife, or either, to the plaintiffs and one Lew E. Darrow or said Darrow and one Geo. W. Frank, as copartners, and on what account, and for what consideration?

Answer. P. S. Kenney and wife executed upon the lands of P. S. Kenney a deed of trust to the plaintiffs to secure the sum of $10,000, that being the amount loaned P. S. Kenney by plaintiffs through their agent Lew E. Darrow. P. S. Kenney & wife also executed upon the same lands

of P. S. Kinney a deed of trust for $1,000 in favor of Geo. W. Frank and Darrow, in consideration of their services in procuring the loan made to Kinney by plaintiffs through their agent Darrow.

Interrogatory nineteenth. State whether or not plaintiffs' deed of trust from Kenney and wife was made a first lien on all of said Kinney's lands, and the deed of trust from Kinney and wife to Lew E. Darrow or Frank & Darrow was made a second lien on all of said real estate superior to all liens thereon, except the plaintiffs, and the deed of trust from Kinney and wife to the defendant to secure the sum of about $36,500.00, was made a third lien on all of said land, junior and inferior to the liens aforesaid, with the knowledge of the plaintiffs, and as a part of and in consum'ation of the pretended contract and transaction sought to
244 be enforced by plaintiffs in this case and referred to in interrogatory thirteenth.

Answer. By agreement between Lew E. Darrow, plaintiff's agent, and myself, it was understood and agreed that upon satisfaction being made by me upon the records of Caldwell County, of all deeds of trust held by the Daviess County Savings Association upon the lands of P. S. Kenney, said Darrow, as agent of plaintiffs, would file the deed of trust for $10,000 upon the lands of P. S. Kenney in favor of plaintiffs for $10,000, and also the deed of trust upon the lands of P. S. Kenney in favor of Geo. W. Frank and Darrow for $1,000, which two deeds of trust would be a first lien upon all the lands of P. S. Kenney, and that any deed of trust in favor of the Daviess County Association upon the lands of P. S. Kenney should be filed by me after the filing of the said two deeds by the said Darrow, and should be inferior to and subject to the liens of plaintiff & Geo. W. Frank & Darrow, as above mentioned, and such agreement between Darrow and myself in reference to the order and precedence of the liens upon the lands of P. S. Kinney was proposed by Lew E. Darrow as a necessary condition of the loan made by plaintiffs through him to Kenney, and was carried out in so far as my action was concerned for the purpose of enabling Kinney to obtain said loan from plaintiffs, and in consum'ation of the contract and transaction now sought to be enforced by plaintiffs in this case.

Interrogatory twentieth. If there is anything you know which would be material to the issues herein, please state the same as particularly as if particularly interrogated in relation thereto.

Answer. In addition to the conversations between Lew E. Darrow and myself on the trip to examine the lands of P. S. Kenney, and on the trip to Kingston at the time of the satisfaction of the deeds of trust
245 upon Kinney's land by me, some correspondence passed between myself and Geo. W. Frank and Darrow in reference to the loan they were proposing to make or procure for Kenney, and in writing to Geo. W. Frank and Darrow in relation to the making of said loan to Kinney and the terms thereof I stated to them, and I had no doubt of my authority to enter satisfaction upon the records of the deeds of trust upon Kinney's lands held and owned by the Daviess County Savings Association, giving as a reason for such conclusion or opinion the fact that I was cashier of the bank which owned the deeds of trust. My intention in so writing was to convince them (Frank & Darrow) that a satisfaction of the records by the Daviess County Savings Ass'n, the then legal owner and

holder of the said liens, would be good and valid in law, and that it would not be necessary for previous holders from whom the said association had bought the said liens to join in any entry of satisfaction of the same upon the records of Caldwell County, and I was not intending in so writing to inform Frank & Darrow or to convey to them the idea that the directors and stockholders of the Daviess County Savings Association had authorized me to make the agreements and contracts necessary to procure the loan for Kenney through them. The question of authority in me to bind the Daviess County Savings Ass'n, by making the contracts and agreements then under discussion relative to the loan to Kenney, was not raised between Lew E. Darrow, or Frank & Darrow, and myself, and seems not to have been thought of by either them or myself. All that was done by me in reference to the matters now in controversy between the parties to this suit was done without consultation with any other officer or director of the Daviess County Savings Association, and without the knowledge
246 of any other officer or director thereof and a knowledge of such transaction did not come to the directors and stockholders for some months after the same had been completed. All that I did was done, I thought, for the best interests of the bank and of its debtor, P. S. Kenney, and it did not occur to me that I had exceeded my authority as cashier until informed by the directors of the association that my action in the matter would not be confirmed by them; which information they gave to me about the beginning of the year 1880 and shortly after the knowledge of such transaction had come to them.

ROBERT L. TOMLIN.

Subscribed and sworn to before me on the day, at the place, and within hours first aforesaid.

[SEAL.] BOYD DUDLEY,
Notary Public, Daviess Co., Mo., & Commissioner.

I, Boyd Dudley, a notary public and commissioner for the purpose of taking the deposition within and for the county of Daviess and State of Missouri, do certify that in pursuance of the annexed agreement appointing me a commissioner to take the deposition of R. L. Tomlin to be used in evidence on the part of the defendant in the above-entitled cause, came before me, at my office in the city of Gallatin, in the county and State last aforesaid, Robert L. Tomlin, who was by me sworn to testify the truth, the whole truth, and nothing but the truth, of *the* knowledge touching the matter in controversy aforesaid; that he was examined upon interrogations hereto attached and his examination reduced to writing and subscribed by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is herewith returned.
247 And I further certify that the said Robert L. Tomlin is a resident of the county of Daviess and State of Missouri.

Given at Gallatin, in the county of Daviess and State of Missouri, this 15th day of August, 1881.

[SEAL.] BOYD DUDLEY,
Notary Public and Commissioner for the purpose of taking this deposition.

My commission expires Dec. 7th, 1884.

248 *Notice to take depositions.*

In the circuit court of Caldwell County, State of Missouri.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees, H. R. Remsen, plaintiffs,
against
ALPHONZO L. MARTIN, SHERIFF, WILLIAM W. Clevenger, sheriff, & Daviess County Savings Association, defendants.

To the above-named defendants:

You are hereby notified that depositions of witnesses to be read in evidence in the above-entitled cause, on the part of the plaintiffs, will be taken at the law-office J. A. Holliday, in the city of Gallatin, in the County of Daviess and State of Missouri, on the 25th day of February, A. D. 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day at the same place, and between the same hours, until completed.

STUART BROS., &
FRANK SHEETZ, *et al.*
Att'ys for Plaintiffs.

Service of the above notice is hereby acknowledged, and issue of dedimus and all exceptions as to time waived.

January the 29th, 1881.

J. A. HOLLIDAY,
Att'y for Defendants.

249 Depositions of witnesses produced, sworn, and examined on the 25th day of February, in the year of our Lord 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the law-office J. A. Holliday, in the city of Gallatin, in the county of Daviess and State of Missouri, before me, Adams Ballinger, a notary public within and for the county of Daviess and State of Missouri, in a certain cause now pending in the circuit court of Caldwell County, State of Missouri, between Albert S. Webb, Robert L. Belknap, & William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs, against Alfonzo L. Martin, sheriff of Daviess County, Missouri, and William W. Clevenger, sheriff of Caldwell County, Missouri, and The Daviess County Savings Association of Gallatin, Daviess County, Missouri, defendants, on the part of the plaintiffs.

WILLIAM S. ABELL, of lawful age, being produced, sworn, and examined on the part of the plaintiffs deposeth and saith:

My name is W. S. Abell; I am 47 years old; I reside in Daviess County, Missouri; and my occupation is recorder of Daviess County; I have lived in Gallatin, Daviess County, Mo., nearly 22 years; I have known the Daviess County Savings Association for the last fifteen years.

Mr. Robert L. Tomlin has been its cashier for the last ten years; James H. B. McFerran has been president of the bank from its organization to the time when Mr. James Hemry was elected its president. Mr. Hemry has been signing his name as president and cashier since Jan'y 1st, 1881. James H. B. McFerran has been residing in the State of Colorado since 1873.

As well as I remember he was here about once every year and remained here a week or two each time.

250 For the last six years Mr. Tomlin was cashier and seemed to do all the business. I know more about it in the last six years, as I have been recorder during that time. What land was sold Col. McFerran made the deeds to, but all other business done in my office was done by Mr. Tomlin.

In one or two cases I know that Mr. Tomlin made the contract in regard to the sale of land, but don't know whether or not he made the contract without the consent of Col. McFerran. In other cases I don't know who made the contracts. As far as I know Mr. Tomlin has, during the last six years, handled and controlled the funds of the bank, its notes, mortgages, deeds of trust, taken its securities and released the same, and had the general management of the business.

Question. During that time do you know of any other person claiming or not claiming to be an officer of the bank, who handled its funds and invested them, who took or released its securities, or had anything to do with the general management of the bank; if so, state who that person was.

Answer. During the year 1880 Mr. Hemry made two deeds that I now remember, he may have made more, and he is the only person, except Mr. Tomlin, that I know of having anything to do with the business of the bank.

I had my office in the bank in the winter of 1872 and 1873, or 1873 and 1874, I don't remember which; I was collector of this township at that time. I have been in the bank a good deal during the last six years, sometimes I would be in the bank every day for a while, and sometimes I might not have been in there for a week.

The book to which you have just called my attention is trust-deed record H of the records of Daviess Co., Mo.

EXHIBIT A.—*W. S. Abell's deposition.*

251 TRUST-DEED.

This deed, made and entered into this 12th day of April, eighteen hundred and seventy-three, by and between William Prewett and Nancy C. Prewett, his wife, Samuel W. Prewett & Hannah J. Prewett, his wife, William H. Prewett and Catharine Prewett, his wife, of the county of Daviess, State of Missouri, parties of the first part, Lucy P. Sackett, of the county of Caldwell, State of Missouri, party of the second part, and Leslie P. Barnum, of the city of Munich, Kingdom of Bavaria, party of the third part, witnesseth:

That said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them

paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part the following described real estate, situate, lying, and being in the county of Daviess and State of Missouri, to wit:

The east half of the northwest quarter, the west half of the northeast quarter, the northeast quarter of the northeast quarter, the southwest quarter of the northwest quarter, all of section eight (8); also the northwest quarter of the northeast quarter, the northeast quarter of the northeast quarter, and the north half of the northwest quarter, fractional, all of section seven (7); also the southwest quarter of the southeast quarter and the southeast quarter of the southeast quarter, all of section six (6); also the northwest quarter of the southeast quarter, the southwest quarter of the southwest quarter, and the east half of the *the* southwest quarter, all of section five (5), and all in township fifty-nine (59), of range twenty-eight (28), containing five hundred and seventy-three (573) acres.

252 To have and to hold the same, with the appurtenances, to the party of the second part, and to her successor or successors in this trust, and to her and her grantees and assigns forever, in trust, however, for the following purposes:

Whereas William Prewett, the said party of the first part, have this day made, executed, and delivered to the said party of the third part, their promissory note of even date herewith, by which they promise to pay to the said Leslie P. Barnum or order, for value received ($4,800), four thousand eight hundred dollars.

GALLATIN, MO., *April* 12th, 1873.

For value received I promise to pay Leslie P. Barnum, or order, the sum of four thousand eight hundred dollars three years after date, with interest from date at the rate of ten per cent. per annum. The interest to be paid semi-annually, and if not paid when due to become principal and draw interest as such. Principal and interest payable at Adrian, Michigan.

(Signed) WILLIAM PREWETT.
SAMUEL W. PREWETT.
WILLIAM H. PREWETT.

Now, therefore, if the said parties of the first part, or any one of them shall well and truly pay off and discharge the debt and interest expressed in the said note and every part thereof when the same shall become due and payable, according to the true tenor, date, and effect of said note, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of said parties of the first part; but should the said first parties fail or refuse to pay the said debt or the said interest, or any part thereof, when the same or any part thereof shall become due and payable, and this deed remain in force, and the said party of the second part, or in case of her absence, death, refusal to act, or disability in any-

253 wise, the (then) acting sheriff of Daviess County, Missouri, at the request of the legal holder of the said note may proceed to sell the property hereinbefore described, or any part thereof, at public vendue to the highest bidder, at the court-house door, in the city of Gallatin, Daviess County, Missouri, for cash, first giving thirty days' public notice of the

time, terms, and place of sale, and of the property to be sold, by advertisement in some newspaper printed and published in the county of Daviess, Missouri, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale; and any statement of facts or recital by the said trustee, in relation to the non-payment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser shall be received as prima facie evidence of such fact; and such trustee shall, out of the proceeds of said sale, pay, first, the cost and expenses of executing this trust, including legal compensation to the trustee for her services, and next she shall apply the proceeds remaining over to the payment of said debt and interest, or so much thereof as remains unpaid, and the remainder, if any, shall be paid to the said parties of the first part, or their legal representatives.

And the said party of the second part covenants faithfully to perform and fulfill the trust herein created, not being liable or responsible for any mischance occasioned by others.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

WILLIAM PREWETT. [SEAL.]

her
NANCY + C. PREWETT. [SEAL.]
mark.

SAMUEL W. PREWETT. [SEAL.]

254 HANNAH J. PREWETT. [SEAL.]

WILLIAM H. PREWETT. [SEAL.]

CATHARINE PREWETT. [SEAL.]

Attest:

WM. S. ABELL, *Recorder.*

Received satisfaction of the annexed deed of trust July 13, 1876.

THE DAVIESS COUNTY SAVINGS ASSOCIATION,
Assignee of Leslie P. Barnum,
By R. L. TOMLIN, *Cashier.*

Recorded this 12th day of April, 1873, 2 p. m.

JAS. H. FROST, *Recorder.*

STATE OF MISSOURI,
County of Daviess, ss:

Be it remembered that on this 12th day of April, A. D. 1873, before the undersigned, a notary public within and for the county of Daviess and State of Missouri, personally came William Prewett and Nancy C., his wife, Sam'n W. Prewett and Hannah J., his wife, Wm. H. Prewett and Catharine, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged that they executed the same for the uses and purposes therein mentioned. And the said Nancy C. Prewett, Hannah J. Prewett, & Catherine Prewett, being by me first examined separate and apart from their husbands, and made fully acquainted with the contents of the said instrument, acknowledged that they executed the same, and relinquished their dower in the

real estate therein mentioned, freely and without fear compulsion of their said husbands.

In testimony whereof I have hereunto set my cand and affixed my official seal at my office in Gallatin, Mo., the day and year first above written.

My term of office as a notary public will expire , 18 .

[SEAL.] THOS. R. SHAW,
Notary Public.

STATE OF MISSOURI,
County of Daviess, ss:

I, William S. Abell, recorder of deeds within and for the county of Daviess aforesaid, do hereby certify the above and foregoing in-
255 strument of writing to be a full, true, and complete copy of a trust-deed made by William Prewett et al. to Lucy P. Sackett as fully as the same appears of record in my office, in book H, page 4.

In witness whereof I have hereunto set my hand and affixed my official seal. Done at office in Gallatin, Missouri, this 26th day of February, A. D. 1881.

[SEAL.] W. S. ABELL, *Recorder.*

Question. On page 4, the record of the trust-deed of Wm. Prewett to Leslie P. Barnum, dated Apr. 12th, 1873, for the sum of $4,800.00. Will you please make a copy of that deed, together with the acknowledgment of satisfaction thereon by R. L. Tomlin, cashier, a part of your deposition marked "Exhibit A," the acknowledgment of satisfaction being as follows:

Received satisfaction in full of the annexed deed of trust, July 13th, 1876.

DAVIESS COUNTY SAVINGS ASSOCIATION,
Assignee of Leslie P. Barnum,
By R. L. TOMLIN, *Cashier.*

Ans. I will. The entry of satisfaction is as above stated.

Question. This book to which I have called your attention has the blank deed of trust printed thereon, has it not; and will you use a blank corresponding with the blank in the book?

Ans. It is, and I will.

Question. Please take this book and turn to such deed of trust as have been acknowledged satisfied by the Daviess Co. Savings Association, through their cashier, Robert L. Tomlin, or any other person or officer of said bank, and give date of deed, names of parties, amount for which the deed is made, page of record, and the acknowledgment of satisfaction in the language as used on the record.

256 Answer. One dated Apr. 29th, 1873; M. B. Fry to the Daviess Co. Savings Association, Wm. A. McDowell, trustee, for the sum of $500.00, page 9.

Received satisfaction in full of the within deed of trust this Jan'y 21st, 1874.

R. L. TOMLIN,
Cashier Daviess Co. Savings Association.

Attest:

JAMES H. FROST, *Recorder.*

One dated Ap'r. 18, 1873; Wm. E. Wirt & wife to R. L. Tomlin, trustee for the Daviess Co. Savings Association, $4,000.00, page 10.

Received satisfaction in full on nine acres of land sold by Wm. E. Wirt to James Rogers, dated Sept. , 1874, being land, to wit: Beginning at SW. corner of the SE. quarter of NE. quarter, sec. 8, town. 59, range 27, thence north 45 degrees west $11\frac{17}{100}$ chains; and thence north $49\frac{3}{4}$ degrees west $6\frac{90}{100}$ chains; thence south 40 degrees and 15 minutes east $16\frac{46}{100}$ chains; thence west $8\frac{10}{100}$ chains to place of beginning.

R. L. TOMLIN, *Trustee.*

Attest:

JAMES H. FROST, *Recorder.*

There are three others besides the one that I have read, and then follows this:

Received full satisfaction in full of this deed of trust, Nov. 22d, 1875.

R. L. TOMLIN,
Cashier of the Daviess Co. Savings Association.

One dated June 11, 1873; Thos. J. Sweary & wife, Sam'l T. Brosius, trustee Elwood Lewis, $400.00, page 16.

Rec'd satisfaction in full of the within deed of trust this 30' day of April, 1875.

DAVIESS CO. SAVINGS ASSOCIATION,
Assignees of Elwood Lewis,
By R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated June 10, 1873; Moses Brown, jr., Wm. A. Harges,
257 trustee, Daviess Co. Savings Ass'n, $750.00, page 17.

Received satisfaction in full on the within deed of trust this 12th day of Nov., 1873.

R. L. TOMLIN,
Cashier Daviess Co. Savings Ass'n.

One dated June 25, 1873; Thomas Clingan, Wm. A. McDowell, trustee, Daviess Co. Savings Ass'n, $654.70, page 24.

Received satisfaction in full of the within deed of trust this March 25, 1875.

R. L. TOMLIN,
Cashier of the Daviess. Co. Sav'ngs Ass'n.

One dated July 24, 1873; John Cooper & wife, Wm. A. Hargis, tr's., Daviess Co. Savings Ass'n, $792.40, page 33.

Received satisfaction in full of the within deed of trust this March 28, 1874.

R. L. TOMLIN,
Cashier Daviess Co. Savings Ass'n.

One dated August 27, 1873; E. C. Weston et al., Robert L. Tomlin, tr's., Daviess Co. Savings Ass'n, $400.00, page 40.

Ap'r. 8, 1876, in consideration of the sum of $199.00, the receipt of which is hereby acknowledged, the within mortgage is satisfied in full as to the SW. quarter of the NW. quarter of sec. 21, in town. 59, range 27, and the same is hereby released.

R. L. TOMLIN,
Trustee, Cashier Daviess County Savings Association.

Also the following:
Received satisfaction in full of the annexed mortgage or deed of trust this Oct. 10, 1876.

R. L. TOMLIN,
Trustee, Cashier Daviess Co. Savings Ass'n.

One dated May, 1873; D. Harfield Davis & wife, Robt. L. Tomlin, trustee, Daviess County Savings Association, $365, page 45.

Received full satisfaction of the within annexed mortgage, Sept. 21, 1875.
258
R. L. TOMLIN,
Trustee and Cashier of D. C. Sav. Ass'n.

One dated Dec. 12th, 1873; Daniel W. Martin & wife, Rob't L. Tomlin, trustee, Daviess County Savings Association, 750.00, page 71.

Received satisfaction on the within mortgage this February 6th, 1875.
R. L. TOMLIN,
Cashier Daviess County Savings Association.
Attest:
W. S. ABELL, *Recorder.*

One dated December 29, 1873; William A. McDowell, trustee Daviess County Savings Association, $500, page 76.

Received satisfaction in full on the within deed of trust this June 16th, 1874.

WM. A. McDOWELL,
Trustee.
R. L. TOMLIN,
Cashier Daviess County Savings Association.
Attest:
JAMES H. FROST, *Recorder.*

One dated Jan'y 13th, 1874; Thos. J. Brown & wife, Wm. A. Hargis, Daviess County Savings Association, $799.55, page 82.

Received satisfaction in full on the within deed of trust this November 23rd, 1874.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.
Attest:
JAMES H. FROST, *Recorder.*

One dated Jan'y 17th, 1874; Andrew Knaner & wife, Rob't L. Tomlin, Daviess County Savings Association, $1,000.00, page 83.

Received satisfaction in full on the within mortgage this Feb'y 1st, 1875.

259 R. L. TOMLIN,
Trustee and Cashier Daviess Co. Sav's Assoc'n.

Attest:

W. S. ABELL, *Recorder.*

One dated Feb'y 12th, 1874; Andrew Bridger & wife, Rob't L. Tomlin, Daviess County Savings Association, $600, page 95.

Received full satisfaction of the annexed deed of trust Jan'y 28, 1876.
R. L. TOMLIN,
Trustee and Cashier of Daviess Co. Sav. Ass'n.

Attest:

W. S. ABELL, *Recorder.*

One dated March 2nd, 1874; Joel C. Shirley, Rob't L. Tomlin, Daviess County Savings Association, $605.00, page 102.

Received satisfaction in full of the annexed deed of trust March 27, 1878.

R. L. TOMLIN,
Cashier of Daviess County Savings Association and Trustee.

Attest:

W. S. ABELL, *Recorder.*

One dated March 3rd, 1874; Samuel P. Howell, Rob't L. Tomlin, Daviess County Savings Association, $55.00, page 103.

Received full satisfaction of the annexed deed of trust by payment of the money due July 6, 1878.

R. L. TOMLIN,
Cashier Daviess Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated Feb'y 14, 1874; John S. Hughes & wife, Rob't L. Tomlin, Daviess County Savings Association, $1,400.00, page 104.

Received satisfaction in full of this deed of trust so far the same is a lien on SW. quarter of NW. quarter and NW. quarter of SW. quarter of sec. 14, township 59, range 29, 80 acres. September 7th, 1875.

ROBT. L. TOMLIN,
260 *Trustee and Cashier Daviess County Savings Association.*

Also the following:

Received satisfaction in full of the within mortgage or deed of trust May 14th, 1877.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated March 19th, 1874; William Sparrow and wife, Robt. L. Tomlin, Daviess County Savings Association, $480.00, page 111.

Received satisfaction in full of the within deed of trust this 3rd day of March, A. D. 1875.

R. L. TOMLIN,
Trustee and Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated April 7, 1874; Permelia S. Sparr, Robt. L. Tomlin, Daviess County Savings Association, $324.50, page 119.

Received satisfaction in full of the within deed of trust this May 17, 1875.

R. L. TOMLIN,
Trustee and Cashier Daviess Co. Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated May 11th, 1874; Silas H. Hammond & wife, Robt. L. Tomlin, Daviess County Savings Association, $375, page 127.

Received full satisfaction of the annexed deed of trust this Nov. 18, 1875.

R. L. TOMLIN,
Trustee and Cashier of the Daviess Co. Savings Association.

Attest:

W. S. ABELL, *Recorder.*

261 One dated April 1st, 1874; Daniel Werner & wife, Robt. L. Tomlin, Daviess County Savings Association, $1,026.85, page 128.

Received satisfaction in full on the within deed of trust this December 12, 1874.

R. L. TOMLIN,
Cashier Daviess County Savings Association and Trustee.

Attest:

JAS. H. FROST, *Rec'd.*

One dated May 22d, 1874; Wm. S. Cochran & wife, Robt. L. Tomlin, Daviess County Savings Association, $350.00, page 129.

Received satisfaction in full on the within deed of trust this Dec. 21, 1874.

ROBT. L. TOMLIN,
Trustee and Cashier Daviess Co. Sav's Association.

Attest:

JAMES H. FROST, *Recorder.*

One dated July 18th, 1874; Thos. B. Roberts & wife, Wm. A. Hargis, Daviess County Savings Association, $1,240.00, page 141.

Received satisfaction in full on the within mortgage this Jan'y 12th, 1875.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated April 7th, 1874; Boone Bacon & wife, Robt. L. Tomlin, Daviess County Savings Association, $215.00, page 143.

Received satisfaction in full of the annexed trust deed by pay-
262 ment of the notes therein described, December 3rd, 1879.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated August 20th, 1874; Joseph H. McGee and wife, Robt. L. Tomlin, Daviess County Savings Association, $400, page 148.

Received satisfaction in full of the within deed of trust April 17th, 1877.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated Dec. 11th, 1874; Daniel Werner and wife, Robt. L. Tomlin, Daviess County Savings Association, $681.00, page 164.

Received full satisfaction of the annexed deed of trust Oct. 27, 1876.

R. L. TOMLIN,
Trustee for the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated January 30th, 1875; James W. Tolen, Robt. L. Tomlin, Daviess County Savings Association, $121.25, page 172.

The annexed trust is satisfied in full by payment of, M'ch 2d, 1880, the note therein described.

R. L. TOMLIN,
Cash'r D. C. S. Ass'n.

Attest:

WM. S. ABELL, *Recorder.*

One dated December 24th, 1874; Howard M. Thompson and wife, Rob't L. Tomlin, Daviess County Savings Association, $100.00, page 174.

Received satisfaction in full of this deed of trust this July 21st, 1875.

263 R. L. TOMLIN,
Trustee and Cashier of Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 8th, 1875; George W. McMurtry, Robt. L. Tomlin, Daviess County Savings Association, $297.35, page 177.

Received full satisfaction of the annexed deed of trust Oct. 20th, 1875.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 1st, 1875; Hanover P. Warford and wife, Robt. L. Tomlin, Daviess County Savings Association, $400.00, page 179.

Received satisfaction in full of the annexed deed of trust July 13th, 1876.

R. L. TOMLIN,
Trustee and Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 13th, 1875; Wm. S. Cockran, Robt. L. Tomlin, Daviess County Savings Association, $147.75, page 180.

Received full satisfaction of the annexed deed of trust April 17th, 1877.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 13th, 1875; Russell P. Snyder & wife, Robt. L. Tomlin, Daviess County Savings Association, $200.00, page 181.

Received full satisfaction of the annexed deed of trust Feb'y 19th, 1876.

264 R. L. TOMLIN,
Trustee and Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 13th, 1875, Henry Briggs and wife, Robt. L. Tomlin, Daviess County Savings Association, $98.65, page 182.

For value received, the Daviess County Savings Association assigns the annexed deed of trust to Wm. E. Gunby, without recourse on it.

THE DAVIESS COUNTY SAVINGS ASSOCIATION,
By R. L. TOMLIN, *Cashier.*

JUNE 12, 1875.

Attest:

WM. S. ABELL, *Recorder.*

Also the following:

I hereby acknowledge satisfaction in full on the within trust-deed this July 19th, 1875.

W. E. GUNBY.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 16th, 1875; Alexander K. Love, Robt. L. Tomlin, Daviess County Savings Association, $100.00, page 183.

Received satisfaction of the annexed deed of trust by payment of the notes therein described March 20th, 1878.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 20th, 1875; Mrs. Lucinda Rowell, Robt. L. Tomlin, Daviess County Savings Association, $200, page 185.

Satisfied by payment of note described this Nov. 14th, 1879.

R. L. TOMLIN,
Cashier D. C. Savings Ass'n.

Attest:

W. S. ABELL, *Recorder.*

One dated Dec. 26th, 1874; Joseph O. Whitt, Samuel T. Brosius, William C. Gillihan, $140, page 186.

265 Received full satisfaction of the within deed of trust this 23rd day of December, 1875.

R. L. TOMLIN,
Cashier, Assignee of W. C. Gillihan.

Attest:

WM. S. ABELL, *Recorder.*

One dated Dec. 26th, 1874; William E. Wirt & wife, R. L. Tomlin, Daviess County Savings Association, $4,000.00, page 187.

Received full satisfaction of the annexed deed of trust November 22, 1875.

R. L. TOMLIN,
Cashier of Daviess County Savings Association.

Attest:

WM S. ABELL, *Recorder.*

One dated Dec. 26th, 1874; William E. Wirt and wife, R. L. Tomlin, Daviess County Savings Association, $4,000.00, page 188.

Received full satisfaction of the annexed deed of trust Nov. 22, 1875.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated Jan'y 2d, 1875; Jacob Rookstool & wife, R. L. Tomlin, trustee, Davison County Savings Association, $300, page 190.

Received full satisfaction of the annexed deed of trust this Dec. 20th, 1875.

R. L. TOMLIN,
Cashier Daviess Co. Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated Jan'y 11th, 1874; Fountain Ferrill, Robt. L. Tomlin, Daviess County Savings Association, $250, page 192.

266 Received full satisfaction of the annexed deed of trust Dec. 29th, 1875.

R. L. TOMLIN,
Cashier Daviess County Savings Association, & Trustee.

Attest:

WM. S. ABELL, *Recorder.*

One dated Jan'y 5th, 1876; Washington Dilly & wife, Rob't L. Tomlin, Daviess County Savings Association, $420, page 194.

Received full satisfaction of the annexed deed of trust Feb'y 3, 1876.

R. L. TOMLIN,
Cashier Daviess County Savings Association & Trustee.

Attest:

WM. S. ABELL, *Recorder.*

One dated September 26th, 1874; Smiley Keene and wife, Robert M. Tomlin, Daviess County Savings Association, $90.75, page 202.

Received full satisfaction of the annexed deed of trust this Jan'y 29th, 1877.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated October 22nd, 1874; John S. H. Drake & wife, Rob't L. Tomlin, Daviess County Savings Association, $236.00, page 203.

Satisfied in full, by payment of the note secured to be paid in the mortgage, Sept. 6th, 1878.

R. L. TOMLIN,
Cashier Daviess Co. Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Oct. 29th, 1874; Leonard Buzzard, Joshua F. Hicklin, W. E. Wirt, & Thos. J. Brown, $456.75, page 205.

The annexed deed of trust is satisfied by payment of all the notes therein described, this Dec. 11th, 1880.

R. L. TOMLIN,
267 *Cashier Daviess Co. Savings Association,*
Assignee of T. J. Brown and W. E. Wirt,
and legal owners of said notes, 6 in all.

Attest:

WM. S. ABELL, *Recorder.*

One dated Nov. 30th, 1874; Asher Sandals and wife, Rob't L. Tomlin, Daviess County Savings Association, $200, page 211.

Received full satisfaction of the annexed deed of trust, by payment of the same, Jan'y 30th, 1877.

R. L. TOMLIN,
Cashier of the Daviess Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Dec. 22nd, 1874; John A. Mutort, Rob't L. Tomlin, Daviess County Savings Association, $225, page 212.

Received full satisfaction of the annexed deed of trust December 29th, 1875.

R. L. TOMLIN,
Cashier Daviess County Savings Association, and Trustee.

Attest:

WM. S. ABELL, *Recorder.*

One dated Dec. 19th, 1874; Charles O. Cole & wife, Rob't L. Tomlin, Daviess County Savings Association, $719.60, page 213.

Received satisfaction in full of the annexed deed of trust Aug. 27th, 1875.

R. L. TOMLIN,
Trustee and Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 26th, 1875; James Ethington and Susan Ethington, Rob't L. Tomlin, Daviess County Savings Association, $88.87, page 216.

268 Received *satisfaction* full satisfaction of the annexed deed of trust Nov. 24th, 1875.

R. L. TOMLIN,
Cash'r Daviess Co. Sav's Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 24th, 1875; James E. Nations and wife, Robt. L. Tomlins, Daviess County Savings Association, $295.00, page 222.

Received satisfaction in full of the annexed deed of trust June 14th, 1877.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 27th, 1875; Asher Sandals & wife, Robt. L. Tomlin, Daviess County Savings Association, $150, page 223.

Received full satisfaction of the annexed deeds of trust Oct. 26th, 1876.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated March 4th, 1875; Anson Pritchard & wife, Robt. L. Tomlin, and William C. Gillihan, Daviess County Savings Association, $190.45, page 225.

Received satisfaction of the annexed trust-deed Aug. 28th, 1879, by payment of the notes described therein.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated March 4th, 1875; Joel C. Shirley, Robt. L. Tomlin, Daviess County Savings Association, $98.10, page 226.

269 Received satisfaction in full of the annexed deed of trust March 27th, 1878.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated March 7th, 1875; Alphonzo L. Martin & wife, Robt. L. Tomlin, Daviess County Savings Association, $560, page 228.

The annexed trust-deed is satisfied in full, by payment of the note therein described, this April 24th, 1879.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated March 2nd, 1875; Henry Robert & wife, Robt. L. Tomlin, Daviess County Savings Association, $1,856.00, page 229.

In consideration of a credit on the note which the annexed deed secures, I hereby release the NW. quarter of the SE. quarter sec. 28, township 60, range 28, in said deed of trust.

R. L. TOMLIN,
Trustee and Cashier of Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Dec. 22d, 1874; Robert M. Graham & wife, Robt. L. Tomlin, Daviess County Savings Association, $595.60, page 231.

Received satisfaction of the annexed deed of trust this Sept. 26th, 1877.

R. L. TOMLIN,
Trustee and Cashier of Daviess Co. Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

270 One dated March 10th, 1875; Johnathan A. Dann and wife, Robt. L. Tomlin & William C. Gillihan, Daviess County Savings Association, $50, page 232.

Received full satisfaction of the annexed deed of trust this Dec. 14th, 1875.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association, and Trustee.

Attest:

WM. S. ABELL, *Recorder.*

One dated March 17th, 1875; Isaac S. Dierdorff & wife, Robt. L. Tomlin, Daviess County Savings Association, $180.00, page 236.

Received full satisfaction of the annexed deed of trust, by payment of the note which it secures, May 17th, 1877.

R. L. TOMLIN,
Cashier and Trustee.

One dated April 2d, 1875; Jefferson Bull and wife, Robt. L. Tomlin, Daviess County Savings Association, $82.50, page 246.

Received full satisfaction of the annexed deed of trust Sept. 25th, 1875.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated April 17th, 1875; Anson Pritchard and wife, Rob't L. Tomlin, Daviess County Savings Association, $100, page 247.

Received satisfaction of the annexed trust-deed, by the payment of the note therein described, Aug. 28, 1879.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated June 3rd, 1875; Campbell Wright, Robt. L. Tomlin, Daviess County Savings Association, $90.25, page 262.

271 Received full satisfaction of the annexed deed of trust this 23rd of Feb'y, 1877.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated June 12th, 1875; Gardner Ross & wife and Joseph C. Shepherd & wife, Robert L. Tomlin, Daviess County Savings Association, $1,000, page 268.

This deed of trust satisfied, by payment of the note therein described, this Feb'y 18th, 1879.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated July 15th, 1875; William P. Fisher, Robt. L. Tomlin, Daviess County Savings Association, $246, page 286.

Received full satisfaction of the annexed deed of trust this Jan'y 25th, 1876.

ROBERT L. TOMLIN,
Trustee and Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Aug. 21st, 1875; Chas. O. Cole & wife, Robt. L. Tomlin, Daviess County Savings Association, $513.75, page 294.

Received full satisfaction of the annexed deed of trust Dec. 29th, 1875.

R. L. TOMLIN,
Cashier Daviess Co. Savings Association, and Trustee.

Attest:

WM. S. ABELL, *Recorder.*

One dated Sept. 6th, 1875; John S. Hughes & wife, William C. Gillihan, Daviess County Savings Association, $491.50, page 297.

272 Received satisfaction in full of the within deed of trust Dec. 21st, 1877.

R. L. TOMLIN,
Cashier Daviess Co. Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated Feb'y 27th, 1875; Lucinda A. Vance and husband, Robt. L. Tomlin, Daviess County Savings Association, $120, page 301.

Received full satisfaction of the annexed deed of trust Aug. 22d, 1876.

R. L. TOMLIN,
Trustee and Cashier Daviess Co. Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Nov. 12th, 1875; Levi Johnson & wife, Robt. L. Tomlin, Daviess County Savings Association, $158.15, page 314.

The annexed deed of trust is this day satisfied by other security being given by Levi Johnson to secure the debt therein described, July 23rd, 1878.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Nov. 15th, 1875; William E. Wirt & wife, Robt. L. Tomlin, Daviess County Savings Association, $3,777.43, page 320.

Received satisfaction of the within deed of trust April 17th, 1877.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated January 3d, 1876; James Johnson, Robt. L. Tomlin, Daviess County Savings Association, $156.75, page 328.

Received full satisfaction of the annexed deed of trust April 5th, 1876.

273

R. L. TOMLIN,
Trustee and Cashier Daviess Co. Savings Association.

Attest:

WM. S. ABFLL, *Recorder.*

One dated Dec. 25th, 1875; Mary E. Stean & husband, Robt. L. Tomlin, Daviess County Savings Association, $261.00, page 333.

Rec'd satisfaction of the annexed deed of trust this Feb'y 17th, 1879.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Oct. 26th, 1875; Augustus T. Andrews & wife, Robt. L. Tomlin, Daviess County Savings Association, $226, page 337.

Received satisfaction of the annexed deed of trust by payment in full to me.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Dec. 10th, 1875; Johnathan A. Dann & wife, Robt. L. Tomlin, Daviess County Savings Association, $72, page 338.

Received satisfaction in full of the within deed of trust this 28' day of March, 1877.

R. L. TOMLIN,
Trustee, Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Dec. 27th, 1875; Marion S. Schuyhart & wife, Robt. L. Tomlin, Daviess Co. Savings Association, $218, page 340.

Received satisfaction in full of the annexed trust-deed, by payment of the note therein described, Aug. 16th, 1879.

R. L. TOMLIN, *Cas.*

274 Attest:

W. S. ABELL, *Recorder.*

One dated Dec. 15th, 1875; Sand Montgomery and wife, Robt. L. Tomlin, Daviess County Savings Association, $637.77, page 341.

Received full satisfaction of the annexed deed of trust this Jan'y 16th, 1878.

R. L. TOMLIN,
Trustee and Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Jan'y 21st, 1876; Fountain Ferrill and wife, Robt. L. Tomlin, Daviess County Savings Association, $162.65, page 346.

Received full satisfaction of the annexed deed of trust May 9th, 1877.

R. L. TOMLIN,
Trustee and Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Jan'y 25th, 1876; James Clater & wife, Robt. L. Tomlin, Daviess County Savings Association, $33.00, page 347.

The note secured by the annexed deed of trust paid in full this Nov. 12th, 1878.

R. L. TOMLIN,
Cashier D. C. S. Asso'n.

Attest:

WM. S. ABELL, *Recorder.*

One dated Jan'y 28th, 1876; Benjamin F. Hines & wife, Robt. L. Tomlin, Daviess County Savings Association, and Thos. J. Brown, $134.00, page 350.

Received satisfaction in full of this deed of trust.

R. L. TOMLIN,
Trustee for Daviess Co. Savings Association.

$84.00, and all int.

T. J. BROWN.

Am't of 50 $ and all interest to date, July 22th, 1876.

THOS. J. BROWN.
R. L. TOMLIN,
Trustee & Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

275 One dated Feb'y 5, 1876; Elisha H. Higgins and wife, Robt. L. Tomlin, Daviess County Savings Association, $464.20, page 352.

Received full satisfaction of the annexed deed of trust this 30th day of July, 1877.

R. L. TOMLIN,
Trustee and Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated Feb'y 14, 1876; James H. Hall, Robt. L. Tomlin, Daviess County Savings Association, $50.00, page 353.

Received full satisfaction of the annexed deed of trust this Jan'y 16, 1878.

R. L. TOMLIN,
Trustee and Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 16, 1876; Charles O. Cole & wife, Robt. L. Tomlin & Wm. C. Gillihan, Daviess County Savings Association $1,082.00, page 354.

Except as to the NW. quarter of the SE. quarter of sec. 34, township 61, range 27, this trust-deed is hereby satisfied in full this Aug. 16, 1879.

ROBT. L. TOMLIN,
Cashier Daviess County Savings Association, & Trustee.

Attest:

W. S. ABELL, *Recorder.*

One dated March 3, 1876, Wm. E. Wirt & wife, Robt. L. Tomlin, Daviess County Savings Association, $800.00, page 367.

Received satisfaction of the annexed deed of trust this April 25th, 1877.

R. L. TOMLIN,
Trustee and Cashier Daviess Co. Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

276 One dated March 18, 1876; Gilbert H. Phelps & wife, Daniel A. Craston, David Preston, $225.00, page 379.

Received full satisfaction of the annexed deed of trust this 28th of Feb'y, 1877.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of David Preston.

Attest:

WM. S. ABELL, *Recorder.*

One dated Apr. 10th, 1876; Wm. M. Whitter, Robt. L. Tomlin, Daviess County Savings Association, $768.50, page 384.

Received satisfaction in full of the annexed deed of trust this Jan'y 3rd, 1877.

R. L. TOMLIN,
Trustee and Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated April 12, 1876; John Conover, Robt. L. Tomlin, Daviess County Savings Association, $100.00, page 385.

Received full satisfaction of the annexed trust-deed Aug. 20, 1879.

R. L. TOMLIN,
Trustee and Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Apr. 22, 1875; Wm. E. Wirt & wife, Robt. L. Tomlin, Daviess County Savings Association, $3,777.73, page 391.

Received satisfaction of the annexed deed of trust Apr. 17, 1877.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL.

One dated May 12, 1876; James Roberts, Robt. L. Tomlin, Daviess County Savings Association, $58.00, page 398.

The annexed deed of trust is satisfied in full, by payment of the note therein described, Dec. 9th, 1879.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

277 One dated June, 1876; Henry Briggs and wife, Henry C. McDougal, Daviess County Savings Association, $93.95, page 406.

Received full satisfaction of the within deed of trust this Feb'y 8th, 1877.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Sept. 23d, 1876; Thomas J. Brown, Joshua F. Hickley, Daviess Co. Savings Association, $720.75, page 430.

Received satisfaction of the annexed deed of trust, by payment in full, this 30' day of Nov., 1877.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated November 8th, 1876; Mary Fuller, Robt. L. Tomlin, Daviess County Savings Association, $127.00, page 439.

The annexed trust-deed is satisfied, by payment of the note therein described, this March 20th, 1880.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated Oct. 9th, 1876; Eugene C. Western, Robt. L. Tomlin, Daviess County Savings Association, $449.00, page 441.

Received satisfaction on the within deed of trust this 13th day of Nov., 1877.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Oct. 18th, 1876; Campbell Wright, R. L. Tomlin, Daviess County Savings Association, $25.75, page 447.

Received satisfaction of the annexed deed of trust Feb'y 23d, 1877.

R. L. TOMLIN,
278 *Cashier Daviess County Savings Association.*

Attest:

WM. S. ABELL, *Recorder.*

One dated Oct. 28, 1876; George B. Ford & wife, Robt. L. Tomlin, Daviess County Savings Association, $70.80, page 449.

The annexed deed of trust is satisfied in full, by payment of the note therein described, Dec. 1st, 1880.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Jan'y 22nd, 1877; James W. Ward, W. C. Gillihan, James Critten, $722.45, page 470.

Received payment in full of James W. Ward of the notes described in this deed of trust this Jan'y 12, 1878.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

One dated Jan'y 13, 1877; Asher Sandals & wife, Robt. L. Tomlin, Daviess County Savings Association, $455.00, page 478.

Received satisfaction in full of the annexed trust-deed this 22d of Jan'y, 1880.

R. L. TOMLIN,
Cashier of Daviess Co. Savings Ass'n.

Attest:

WM. S. ABELL, *Recorder.*

One dated Feb'y 23d, 1877; Martha J. Lindsey & husband, Samuel T. Brossius & Robt. L. Tomlin, Daviess County Savings Association, $226.10, page 488.

Received satisfaction in full of the annexed mortgage Aug. 12, 1878.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

279 One dated March 1st, 1877; Gilbert H. Phelps & wife, Robt. L. Tomlin, Daviess County Savings Association, $355.25, page 491.

Received satisfaction of the annexed deed of trust, by payment in full, this Jan'y 19th, 1878.

R. L. TOMLIN,
Trustee & Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated March 13, 1877; Wm. M. R. Wooderson, Samuel T. Brosius, Daviess County Savings Association, $504.00, page 496.

Received full satisfaction of the debt mentioned in the annexed deed of trust this Jan'y 12th, 1878.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated March, 1877; Robt. D. Bowland & wife, R. L. Tomlin and W. C. Gillihan, Daviess County Savings Association, $650.00, page 500.

The annexed trust-deed is satisfied, by payment of the note therein described, this Apr. 20, 1880.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated Apr. 5, 1877; Woodruff H. Hamilton & wife, Robt. L. Tomlin, Daviess County Savings Association, $340.00, page 510.

The annexed deed of trust is satisfied, by payment of the note therein described, this June 17, 1880.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

280 One dated March 19th, 1877; John J. Caster, Robt. L. Tomlin, Daviess County Savings Association, $400.00, page 511.

The annexed deed of trust is satisfied, by payment of the note therein described, Jan'y 6, 1880.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated April 20, 1877; Wm. E. Wirt, R. L. Tomlin, Daviess County Savings Association, $476.00, page 517.

Received satisfaction of the amount of the annexed deed of trust this 20' day of Sept., 1877.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association, & Trustee.

Attest:

WM. S. ABELL, *Recorder.*

One dated May 13, 1877; Isabella Welker, Robt. L. Tomlin, and Samuel T. Brosius, Daviess County Savings Association, $707.00, page 532.

Received satisfaction in full of the annexed deed of trust, by payment of the note described, July 6, 1878.

R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

One dated Sept. 3rd, 1877; Sanford Smith, A. L. Martin, A. C. Jackman, $600.00, page 562.

Received full satisfaction of the annexed deed of trust, by payment in full, this Dec. 3d, 1877.

R. L. TOMLIN,
Cashier Daviess County Savings Association,
Assignee of A. C. Jackman.

Attest:

WM. S. ABELL, *Recorder.*

One dated Sept. 19, 1877; Wm. E. Wirt and wife, Robt. L. Tomlin, Elias Tracy, $500.00.

Satisfied, by payment of the note therein described, March 6, 1880.
281 R. L. TOMLIN,
Cashier of Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Oct. 29, 1877; James H. Day and wife, Robt. L. Tomlin, Henry Roberts, $145.00, page 583.

Received satisfaction of the annexed deed of trust, by payment of the note therein described, Dec. 22, 1879.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

One dated Nov. 27, 1877; D. Herfield Davis, Joshua T. Hickley, Famous Exchange Bank, and the Daviess County Savings Association, $812.50, page 587.

Rec'd full satisfaction of the annexed trust-deed, so far as the Daviess Co. Savings Ass'n is interested therein.

R. L. TOMLIN,
Cashier Daviess Co. Savings Ass'n.

Attest:

WM. S. ABELL, *Recorder.*

The above deed is also satisfied by T. B. Yotes.

One dated Nov. 30, 1877; James A. Scott, Robt. L. Tomlin, Daviess County Savings Association, $200.00, page 589.

Received satisfaction in full by payment of the note therein described.
R. L. TOMLIN, *Cashier.*

SEPT. 11, 1879.

Attest:

WM. S. ABELL, *Recorder.*

One dated Nov. 30, 1877; Thos. J. Brown & wife, Robt. L. Tomlin, Daviess County Savings Association, $500, page 590.

Received full satisfaction of the annexed deed of trust this 11th day of Dec. 1878.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association, and Trustee.

Attest:

WM. S. ABELL, *Recorder.*

282 One dated Feb'y 6, 1878; Hugh Huston, R. L. Tomlin, Daviess County Savings Association, $100.00, page 623.

Rec'd satisfaction of the annexed deed of trust by payment Nov. 4, 1879, of the note described therein.

R. L. TOMLIN,
Cashier & Trustee.

Attest:

WM. S. ABELL, *Recorder.*

One dated March 6, 1878; Asher D. Brown, Robt. L. Tomlin, Daviess County Savings Association, $905.50, page 628.

The annexed trust-deed is satisfied in full, by payment of the note therein described, this June 23, 1880.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

Cross-examined by defendants' att'ys:

I knew Lew E. Darrow before August, 1879. Mr. Darrow has been in my office two or three times during the time I have been in the office, but I don't know whether or not he ever made any examination of the records; if he did I didn't know it.

R. L. Tomlin, as cashier of the Daviess Co. Savings Association, entered a number of deeds of trust, payable to the Daviess Co. Savings Association, satisfied, as stated in my examination-in-chief. Said Tomlin never produced any power of att'y or other authority from the bank or its officers or any one else to make said entries of satisfaction. I am recorder of Daviess Co., Mo., and have full power and control of the office, and have had for the last six years.

When I spoke of Mr. Tomlin's releasing securities in my examination-in-chief I meant the deeds of trust referred to in said examination-in-chief. I think I know that the bank has had directors ever since it was organized.

283 I believe Mr. Tomlin has had a clerk in the bank all the time.

My habit has been to record all papers brought to me for record that were properly acknowledged.

Question. You say that R. L. Tomlin brought you no power of att'y

or other authority authorizing him to enter satisfaction of the deeds of trust and mortgages referred to in your examination-in-chief, and didn't you know that R. L. Tomlin, as cashier, had no authority or right to enter such deeds of trust and mortgages satisfied with a power of att'y, made by the directors of the bank, empowering him to do so.

Answer. I didn't know anything about it; he had been acting in the same capacity for 3 or 4 years prior to my coming into the office.

W. S. ABELL.

Subscribed and sworn to by me on the day, at the place, and within the hours first aforesaid.

Term expires Aug. 9, 1882.

[SEAL.] ADAMS BALLINGER,
Notary Public, Daviess Co., Mo.

BENTON MILLER, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

My name is Benton Miller; I am forty-two years old; reside in Gallatin, Daviess Co., Mo., and my occupation is that of a merchant. I have lived in Gallatin about 17 years. My place of business is on the next lot west of the Daviess Co. Savings Association. I have been in the bank sometimes once a day, sometimes 2 or 3 times a day, and sometimes I might skip a day.

R. L. Tomlin has been cashier of the bank for about 8 years, and went out of the bank since the first of January, 1881.

284 I think Col. McFerran was the president of the bank from 1873 to 1879, and has resided during that time in the State of Colorado.

Question. From 1873 down to 1879, so far as you could see, who had control of the moneys and assets of said bank, took and released its securities, handled its funds, and in general transacted and controlled all of its business?

Answer. Mr. Tomlin seemed to have charge of the money; further than that I don't know anything about it.

Mr. Tomlin took me occasionally as a security, and I can't say about others. So far as I could see Mr. Tomlin had the general management and control of the bank.

Cross-examination:

There was a directory for the bank all the time, besides Mr. Tomlin. I know this because I saw it advertised in the town papers, containing notices of annual and semi-annual meetings for the purpose of organizing the officers of the bank, and also from talks with John A. Tuggle, who claimed to be an officer of the bank. I also know from what I saw in the papers and from talking with the parties that Dr. Givens, H. C. McDougal, and James Henry were officers of the bank. I don't know what action the directors of the bank had nor what control they took over the bank or its assets.

Question. State what you know about the directors of the bank, or any of them, interesting themselves in its business and exercising care or control over its business or any part of it.

Answer. I know of one of the officers of the bank who seemed to take

an interest in the affairs of it; his name is John A. Tuggle, who asked me some questions in regard to it.

285 I don't remember when Col. McFerran ceased to act as president of the bank.

I would consider that Col. McFerran took an interest in the bank from the visits he made here, which I supposed was to look after and control it. Before Col. McFerran left here and went to Colorado I know that he seemed to have the whole charge of the bank. I mean by the above that Col. McFerran took the general supervision of the bank as its president.

I know from James Hemry, by his own statement, that he was taking an interest in the affairs of the bank as its president. When I said in my examination-in-chief that Mr. Tomlin had charge and control of the bank, I meant that I knew he was cashier of the bank from his signatures to drafts and certificates of deposit, and seemed to have full control of the bank as a hired hand, by receiving and paying out the funds of the bank.

Re-examination-in-chief:

Question. You say that Col. McFerran appeared to be interested in the bank; by this you mean that he was here once or twice a year. Give all your reasons for saying that he appeared to be interested.

(Objected to because leading. Waived.)

Question. Give all your reasons why you said Col. McFerran appeared to be interested in the bank after he left here and went to Colorado?

Ans. On his occasional visits I have seen him at work in the bank, and sometimes late at night.

BENTON MILLER.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] ADAMS BELLINGER,

286 *Notary Public, Daviess Co., Mo.*

Term expires Aug. 9th, 1882.

The further taking of said depositions was then adjourned from 6 o'clock p. m. to 7 o'clock p. m. by agreement, at which time the taking of said depositions are to be continued by consent of parties.

[SEAL.] ADAM BALLINGER,
Notary Public.

Pursuant to adjournment, as above, the parties met at 7 o'clock p. m., when the further taking of said depositions was continued by consent, as follows:

WM. C. GILLIHAN, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

My name is William C. Gillihan; my age, 40 years; I reside in Gallatin, Mo., and my occupation is a lawyer; I have lived in Gallatin for 20 years; Col. McFerran has been president of the Daviess Co. Savings Association since its organization in 1865 to 1879; Mr. Tomlin had been cashier some 8 or 9 years when he went out in January, 1881. I have understood all the time that there were directors to the bank; H. C. McDougal, Dr. Givens, James Hemry, and John A. Tuggle have been direct-

ors of the bank. I have been quite intimate with the officers of the bank from its organization. I don't think I was ever the regularly employed attorney of the bank, but our firm (Gillihna & Brosius) have done business for it for the last eight years. I think I was very well acquainted with the inside workings of the bank, though I was never present at any of their meetings or at one election of its officers. The men I speak of as directors have most of them, I think, been so off and on from its organization.

Mr. Hemry, I think, has resided most of the time for the last 4 or 5 years in Caldwell County; Mr. Tuggle lives some 8 or 9 miles from this
287 place, and Mr. McDougal lives in this town. Dr. Givens also lives here. I don't know whether he is director at present or not. Aside from the election of officers and their semi-annual meetings I don't know of the directors of the bank ever attending to any other business; they may have done so, but I don't know that they did. I don't know what they met for except the election of officers. I don't know of the directors ever transacting any other business than the election of officers. During the months of July and August, 1879, the principal occupation of John A. Tuggle was farming and judge of the county court. Mr. Hemry was a man that had a great deal of moneyed interest to look after, and I think he was looking after that during that time and prior. H. C. McDougal was practicing law at Gallatin and Trenton. They have an office at each place. He was here about half the time. Dr. Givens was practicing medicine in Gallatin from 1873 to the last of August, 1879. James McFerran, the president, resided in Colorado Springs, Colorado, and visited this place about once a year since 1873, and would remain here sometimes a week or ten days—never more than two weeks nor less than one week.

Now, during this time, from 1875 to the last day of August, 1879, who was in charge and control of the bank, handling its funds, making its contracts, taking and cancelling its deeds of trust and mortgages, and transacting in general all business which might come up and in which it might be engaged or concerned?

Answer. I knew of no one except Robert L. Tomlin, cashier. My impression is that the visits of Col. McFerran to this place were on business connected with the bank. On one of these visits he asked me about the bank and how it was running, and I told him as near as I knew, from the time he left here in 1873 to the last of August, 1879. I don't
288 know of his participating in or conducting any of the business of the bank.

Question. During this time I will ask you to state what you may know about R. L. Tomlin having at different times cancelled the record deeds of trust in favor of the bank when only a part of the indebtedness was paid, and having released property conveyed by said deed when only a part of said indebtedness was paid, or having taken new deeds and released property described in the old deeds. State fully.

I only remember one instance where a part of the real estate in a deed of trust was released, and this deed of trust was given by Wirt and wife for the benefit of the Daviess Co. Savings Association, in book H, of trust-deed record of Daviess Co. There are two or three instances of the same kind in the same book, but I can't give names of parties. I remember a case where the bank held a deed of trust against Preston and Simeon.

EXHIBIT A.—*Wm. C. Gillihan's deposition.*

On page 106 of book N, Daviess County, Missouri, records of trust-deeds, is the following deed of trust by Irena Sanders to the Daviess County Savings Association, dated Feb'y 7, 1879, for $250, and on margin is the following satisfaction signed by R. L. Tomlin, cashier:

The annexed trust-deed is satisfied in full by payment of the notes therein described, this May 10th, 1880.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of Mary E. Stean.
JAMES HEMRY, *President.*

Attest:

W. S. ABELL, *Recorder.*

On page 111, book N of said records, is a deed of trust by Alfred C. Leard to the Daviess County Savings Association, dated M'ch 3rd, 1879, for $100, and on the margin is the following satisfaction, signed by R. L. Tomlin, cashier.

289 This trust-deed is satisfied by payment of the notes herein described.

R. L. TOMLIN, *Cashier.*

SEPT. 25, 1879.

Attest:

W. S. ABELL, *Recorder.*

On page 125, book N of said records, is a deed of trust by Francis McGlohlin to R. L. Tomlin, second party, and James Hemry, third party, dated January 23rd, 1879, for $115, and on the margin is the following satisfaction:

Received satisfaction in full of the within deed of trust, this Nov. 1st, 1879.

JAMES HEMRY.

Attest:

W. S. ABELL, *Recorder.*

On page 175, book N of said records, is a deed of trust by Henry Briggs to the Daviess County Association, dated August 12th, 1879, for $262.20, and on the margin are the following satisfactions:

The annexed trust-deed is satisfied as to lots 1, 2, & 3 in block 28, therein described, on payment by John H. Sutton of $75.00, June 26th, 1880.

R. L. TOMLIN,
Cashier of Daviess Co. Savings Association.

Attest:

W. S. ABELL, *Recorder.*

This trust-deed is satisfied as to lots six and seven in block 27, therein named, on payment by H. Briggs of $25.00.

R. L. TOMLIN,
Cashier Daviess Co. Savings Ass'n.

AUG. 16TH, 1880.

Attest:

W. S. ABELL, *Recorder.*

On page 174, book N of said records, is a deed of trust by Thomas B. Roberts to the Daviess County Savings Association, dated August 30th, 1879, for $600, and on the margin is the following satisfaction:

The annexed deed of trust is satisfied by payment of the notes therein described, July 23rd, 1880.

R. L. TOMLIN,
Cashier of the Daviess County Savings Ass'n.

Attest:

W. S. ABELL, *Recorder.*

On page 185, book N of said records, is a deed of trust by John H. Sutton to Robert Tomlin, second party, and Amos E. Briggs, third
290 party, dated Sept. 21st, 1879, for fifty dollars, and on the margin is the following satisfaction:

The annexed trust deed is satisfied by payment of the note herein described, June 26th, 1880.

R. L. TOMLIN,
Cashier, Assignee of Amos E. Briggs.

Attest:

W. S. ABELL, *Recorder.*

On page 276, book N of said records, is a deed of trust by Ellen S. Davenport to the Daviess County Savings Association, dated April 14th, 1880, for $131, and on the margin is the following satisfaction:

The annexed deed of trust is satisfied by payment of the note herein described in full, this Dec. 11th, 1880.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

On page 63, book F of said records, is a mortgage-deed by John Cooper to the Daviess Co. Savings Ass'n, and on the margin is the following satisfaction:

Received satisfaction in full of the within mortgage this 6' day of January, A. D. 1873.

R. L. TOMLIN,
Cashier Daviess Co. Savings Ass'n.

Attest:

JOS. H. FROST, *Recorder.*

On page 69, book F of said records, is a mortgage-deed by Preston Hamblin to the Daviess Co. Savings Ass'n, and on the margin is the following satisfaction :

Received satisfaction in full of the within mortgage this Dec. 31, 1874.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest :

JOS. H. FROST, *Recorder.*

On page 89, book F of said records, is a mortgage-deed by William B. Guthery to the Daviess County Savings Association, and on the margin is the following satisfaction :

Received satisfaction in full of the within mortgage this 16th day of November, A. D. 1872.

R. L. TOMLIN,
Cashier Daviess Co. Savings Association.

Attest :

JAMES H. FROST, *Recorder.*

On page 91, book F of said records, is a mortgage-deed from
291 Amos Conoway to the Daviess County Savings Association, and on the margin is the following satisfaction :

Received satisfaction in full of the within mortgage-deed this 27' day of August, A. D. 1872.

R. L. TOMLIN,
Cahier Daviess Co. Sav. Ass'n.

Attest :

JAS. H. FROST, *Recorder.*

On page 114, book F of said records, is a mortgage-deed by Amos Conaway to the Daviess County Savings Association, and on the margin is the following satisfaction :

Received satisfaction in full of the within mortgage this 11th day of Dec., 1872.

R. L. TOMLIN,
Cashier Daviess County Sav. Ass'n.

Attest :

JAS. H. FROST, *Recorder.*

On page 117, book F of said records, is a mortgage by John L. Flint to the Daviess County Savings Association, and on the margin is the following satisfaction :

Received satisfaction in full of the within mortgage this June 14th, 1873.

R. L. TOMLIN,
Assognee of A. W. Callaham.

Attest :

JAS. H. FROST, *Recorder.*

On page 119, book F of said records, is a mortgage-deed by D. W. Martin to Thomas J. Flint, and on the margin is the following satisfaction:

Received satisfaction in full of the annexed mortgage, Oct. 26, 1876.

R. L. TOMLIN,
Cashier Daviess County Savings Association,
Assignee of Thomas J. Flint.

Attest:

WM. S. ABELL, *Recorder.*

On page 146, book F of said records, is a mortgage-deed by William Daviess to William H. Creekwell, and on the margin is the following satisfaction:

Received satisfaction of the within mortgage in full this 1st day of Sept., 1874.

R. L. TOMLIN,
Cashier Daviess County Savings Association,
Assignee of W. H. Creekmore.

Attest:

JAMES H. FROST, *Recorder.*

On page 150, book F of said records, is a mortgage-deed from Samuel Block to the Daviess County Savings Association, and on the margin is the following satisfaction:

292 Received full satisfaction of the annexed mortgage by payment of the note therein described this Aug. 30th, 1879.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

On page 160, book F of said records, is a mortgage-deed by David New to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received satisfaction in full of the within mortgage this 3rd day of Nov., 1873.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

J. H. FROST, *Recorder.*

On page 162, book F of said records, is a mortgage-deed by Strother M. Mitchell to L. F. Myers, and on the margin is the following satisfaction:

Received satisfaction in full on the within mortgage this 15' day of August, 1873.

ROBERT L. TOMLIN,
Assignee of L. F. Meyers.

Attest:

J. H. FROST, *Recorder.*

On page 176, book F of said records, is a mortgage-deed by Tillman H. Holmes to Silas W. Combs, and on the margin is the following satisfaction:

Received satisfaction in full on the within mortgage this 30th day of October, 1874.

R. L. TOMLIN,
Cashier Daviess Co. Sav. Association,
Assignee of Silas W. Combs.

Attest:

JAS. H. FROST, *Recorder.*

On page 177, book F of said records, is a mortgage-deed by Frederick C. Eastman to Mary Ann Edwards, and on the margin is the following satisfaction:

Received satisfaction in full of the annexed mortgage this 16th of September, 1875.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of Mary A. Edwards.

Attest:

WM. S. ABELL, *Recorder.*

On page 182, book F of said records, is a mortgage-deed by
293 George Graham to Samuel J. McDonald, and on the margin is the following satisfaction:

Received satisfaction in full of the within mortgage-deed, March 31st, 1875.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of S. J. McDonald.

Attest:

WM. S. ABELL, *Recorder.*

On page 183, book F of said records, is a mortgage-deed by Francis M. Pork to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received satisfaction in full on the within mortgage this 25th day of November, A. D. 1873.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

JAMES H. FROST, *Recorder.*

On page 193, book F of said records, is a mortgage-deed by William P. Fisher to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received satisfaction in full on the within mortgage this March 20th, 1874.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

JAMES H. FROST, *Recorder.*

On page 213, book F of said records, is a mortgage-deed by John T. Taylor to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received satisfaction in full of the within mortgage, Dec. 3rd, 1875.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

On page 262, book F of said records, is a mortgage-deed by Moses Brown, jr., to Robert Lawson, and on the margin is the following satisfaction:

Received satisfaction in full of the within mortgage this 7th day of July, 1875.

R. L. TOMLIN,
Cashier, Assignee of Robert Lawson.

Attest:

W. S. ABELL, *Recorder.*

On page 272, book F of said records, is a mortgage-deed by
294 James C. Horrah to James H. Fisher, and on the margin is the following satisfaction:

Received satisfaction in full on the within mortgage this January 19th, 1875.

R. L. TOMLIN,
Cashier, Assignee of Jos. M. Fisher.

Attest:

WM. S. ABELL, *Recorder.*

On page 273, book F of said records, is a mortgage-deed by Joseph R. Sanders to William H. Creekman, and on the margin is the following satisfaction:

Received satisfaction in full of the within mortgage this 29' day of March, 1875.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of W. H. Creekmore.

On page 335, book F of said records, is a mortgage-deed by Warren Sharron to James H. Fisher, and on the margin is the following satisfaction:

Received satisfaction in full of the annexed mortgage-deed by payment of the note therein mentioned, this Aug. 7th, 1878.

R. L. TOMLIN,
Cashier, & Assignee of James H. Fisher.

Attest:

W S. ABELL, *Recorder.*

On page 339, book F of said records, is a mortgage-deed by Weslie Keplar to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received payment in full of the annexed mortgage this May 9th, 1876.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

On page 341, book N of said records, is a mortgage-deed by Asher D. Brown to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received satisfaction of the annexed mortgage Mch. 7th, 1878.

R. L. TOMLIN,
Cashier of the Daviess Co. Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

On page 342, book F of said records, is a mortgage-deed by William P. Fisher to the Daviess County Savings Association, and on the margin is the following satisfaction:

295 Received full satisfaction of the annexed mortgage Nov. 29, 1875.

R. L. TOMLIN,
Trustee, & Cashier Daviess County Savings Association.

Attest:

WM. S. ABELL, *Recorder.*

On page 343, book F of said records, is a mortgage-deed by Francis

W. Shriver to the Daviess County Savings Association, and on the margin of the record is the following satisfaction:

Received full satisfaction of the annexed mortgage by payment this Dec. 5th, 1876.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

On page 358, book F of said records, is a mortgage-deed by Henry Franks to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received full satisfaction of the annexed mortgage Jan'y 15th, 1876.
THE DAVIESS COUNTY SAVINGS ASSOCIATION,
By R. L. TOMLIN, *Cashier.*

Attest:

WM. S. ABELL, *Recorder.*

On page 366, book F of said records, is a mortgage-deed by Taylor Allen to the Daviess County Savings Association, and on the margin is the following satisfaction:

Paid in full Oct. 7th, 1878.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

On page 368, book F of said records, is a mortgage-deed by Johnathan H. Curtis to Thomas J. Brown, and on the margin is the following satisfaction:

Satisfied by payment in full this 29th day of August, 1878.
R. L. TOMLIN,
Cashier of the Daviess Co. Savings Association,
Assignee of Thomas J. Brown, and legal holder of the note.

Attest:

WM. S. ABELL, *Recorder.*

On page 373, book F of said records, is a mortgage-deed by
296 James L. McNeely to John Cooper, and on the margin is the following satisfaction:

Received full satisfaction of the annexed mortgage-deed, Feb. 19, 1876.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association,
Assignee of John Cooper.

Attest:

W. S. ABELL, *Recorder.*

On page 375, book F of said records, is a mortgage-deed by Joseph H. Herndon to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received satisfaction in full by payment of the money secured to be paid by the annexed mortgage, this Aug. 20th 1878.

R. L. TOMLIN,
Cashier of the Daviess County Savings Assoc'n.

WM. S. ABELL, *Recorder.*

On page 394, book F of said records, is a mortgage-deed by Martin A. Troxel to Thomas J. Brown, and on the margin is the following satisfaction:

Received satisfaction in full of the annexed mortgage by payment of the notes therein described, this June 12th, 1878, the first-mentioned note having been paid to Thomas J. Brown, and the last-mentioned note having been paid to the Daviess County Savings Assoc'n, assignee of Thos. J. Brown.

R. L. TOMLIN, *Cashier.*
THOMAS J. BROWN.

Attest:

WM. S. ABELL, *Recorder.*

On page 431, book F of said records, is a mortgage-deed by Jacob Snyder to Elizabeth Montgomery, and on the margin is the following satisfaction:

The annexed mortgage-deed is satisfied by payment of the note therein described, this 6th day of March, 1880.

R. L. TOMLIN,
Cashier D. C. S. A., Assignee of Elizabeth Montgomery.

Attest:

W. S. ABELL, *Recorder.*

On page 446, book F of said records, is a mortgage-deed by David Lama to Albert M. Garrish, and on the margin is the following satisfaction:

297 The annexed mortgage is satisfied by payment of the last two notes therein described, this Feb'y 2nd, 1880.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association, and Assignee of Albert M. Garrish as to the said notes and of the mortgage securing the same.

Attest:

W. S. ABELL, *Recorder.*

On page 469, book F of said records, is a mortgage-deed by Charles O. Cole to the Daviess County Savings Association, and on the margin is the following satisfaction:

Received satisfaction of the annexed mortgage by payment of the note therein described, Oct. 11th, 1876.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

On page 485, book F of said records, is a mortgage-deed by John G. Gerrish to David Lamma, and on the margin is the following satisfaction:

The annexed mortgage-deed is satisfied by payment of the notes therein described, this Feb'y 2nd, 1880.

R. L. TOMLIN,
Assignee of David Lamma.

Attest:

W. S. ABELL, *Recorder.*

On page 510, book F of said records, is a mortgage-deed by Addie A. Rush to the Daviess County Savings Association, and on the margin is the following satisfaction:

The annexed mortgage satisfied by payment in full, Dec. 11th, 1877.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

On page 517, book F of said records, is a mortgage-deed by Thomas J. Brown to Levi B. Rogers, guardian of Jacob Payne, and on the margin is the following satisfaction:

Rec'd, Gallatin, Mo., Jan'y 19th, 1878, satisfaction in full of this mortgage; the Daviess County Savings Association having purchased the note herein described from Jacob Payne and Levi Rogers, his
298 guardian, and assigned to the said association.

R. L. TOMLIN,
Cashier of the Daviess County Savings Association.

Attest:

W. S. ABELL, *Recorder.*

On page 551, book F of said records, is a mortgage-deed by Agnes Hubbard to the Moline Wagon Co., of Moline, Ills., and on the margin is the following satisfaction:

The annexed mortgage satisfied by payment of the note therein described, this Dec. 6th, 1879.

R. L. TOMLIN,
Cashier, Assignee of Moline Wagon Company.

Attest:

W. S. ABELL, *Recorder.*

On page 194, book No. 1 (chattel record), is a chattel mortgage by Thomas B. Roberts to the Daviess County Savings Association, and on the margin is the following satisfaction :

Received satisfaction of the annexed mortgage by payment in full of the note therein described, this 17th day of Nov., 1877.

THE DAVIESS COUNTY SAVINGS ASSOCIATION,
By R. L. TOMLIN, *Cashier.*

Attest :

W. S. ABELL, *Recorder.*

On page 274, book No. 1 (chattel record), is a chattel mortgage by Thomas Z. Wallace to the Daviess County Savings Association, and on the margin is the following satisfaction :

Paid this 26th day of Aug., 1878.

R. L. TOMLIN,
Cashier Daviess County Savings Association.

Attest :

W. S. ABELL, *Recorder.*

Hamlin, or one of them, which was satisfied and released by taking a new deed of trust. The first deed of trust was satisfied by taking a new deed of trust, and that one was satisfied by taking still a third deed of trust. I believe that these are all the instances that I remember.

Question. About how many deeds of trust are there in book H, that you have referred to, that were given to the bank and that have been cancelled by Tomlin as cashier.

Answer. I don't know how many that were given directly to the bank that were thus satisfied, but there is about one hundred that were
299 given to the bank and assigned to the bank that were thus satisfied.

Question. Will you please examine the records of this Daviess County, Mo., and make out an abstract and attach to this your deposition, marked "Exhibit A," showing in each case the book and page, the amount secured by the deed or mortgage and date of same, the parties giving it, and the cancellation of the same by the bank or its officers, giving such cancellation in the exact words in which it is given in the record? You can omit from this list such deeds as are furnished by the recorder in his deposition.

Answer. I will try, but it will be quite a job.

Question. How much and in what form was Patrick Kinney indebted to the Daviess Co. Savings Association about June 1st, 1879?

Answer. I think about $40,000.00, evidenced by several deeds of trust on different portions or parts of Kinney's land. I think a truthful statement appears in the petition. I would consider him insolvent at that time, and consider him now.

Question. Now, state fully what you may know about the Daviess Co. Savings Association applying to these plaintiffs for a loan on money in behalf of Patrick Kinney to assist in liquidating the claim it held against him, and all that was done in and concerning the same.

(Objected to as leading and hearsay.)

Answer. About June or July, 1879, Mr. Tomlin came to us to know if we could effect a loan of Mr. Frank & Darrow, of Corning, Iowa, for $10,000.00. I told him that we were not agents for Caldwell County, but would write to Mr. Frank and Darrow about the matter, and he had better write also, and I learned from him that he did. He gave as a reason for wanting the money that there was two or three liens on
300 the land that he wanted to get nearer home and consolidated into one deed of trust, one in particular to Mr. Powers, a priest in St. Joseph, Mo., who was away from home, and he didn't know when it would sell. He wanted to get them into one deed of trust, as Kinney's wife had not signed some of the deeds the bank held. I think he stated at the time that to pay off all the liens that were prior to the bank's liens would take more money than the bank at that time could easily spare, and by making the loan he could have considerable more money than would pay off the liens to use in the bank. I don't think I had more than two conversations with Mr. Tomlin about the matter, and I have given the substance of them. Mr. Brosius was the more active in talking the matter up. Application was made to Frank & Darrow on the suggestion of Mr. Tomlin, and Mr. Darrow brought the money here, and he and Mr. Tomlin went to Caldwell Co. and closed the loan to Mr. Kinney; that's the way the papers read. Mr. Tomlin told me he was present at the time the money was paid over, and he received about $3,500.00 or 3,600.00 after the liens were paid off. I understood from his conversation that he received the $3,500.00 or $3,600.00 as the cashier of the bank. Mr. Tomlin was to satisfy all the deeds held by the bank on Kinney's land, so that after paying the prior liens the plaintiffs would have a first lien on the Kenney farm. I don't think I ever heard of any question being raised by bank as Tomlin's right to cancel/ any of the deeds of trust in book H referred to by me. Just before the Daviess Co. Savings Association advertised the land for sale Mr. Tomlin came to me with a written refusal to act as trustee in one of the deeds of trust against Kinney and in favor of the bank, in Mr. Holliday's handwriting, and requested me to
301 sign it. This was one of the old deeds of trust. I told him I thought the deed had been satisfied, and he said yes, but the bank officers thought not, and were going to sell it; and we signed. This was the first I had heard of his authority being questioned to satisfy the deed of trust. I think Mr. Tomlin came to me and asked me if I knew what book the Saylor case was reported in, and I told him that I didn't, but could find it, and I did so, and gave it to him. This was about the time of the meeting of the directors after the loan. I think about February, 1880.

Question. Will you please make a copy of such entries as you may be able to find in the bank books concerning this Kenney matter and attach it to your deposition, marked "Exhibit B"?

Answer. I will, with the consent of the officers.

Cross-examined by defendants' counsel:

When Tomlin applied to me for a loan from Frank and Darrow he stated that Mr. Kenney would make the application.

Question. In all that you have stated in your examination-in-chief in relation to the loan from Frank and Darrow and its application, you have simply given what R. L. Tomlin said about it?

Answer. Yes; I don't think any one else ever said anything about it. When Mr. Tomlin came for the report of the Sailor case he did not state what he wanted with it.

Question. Are the deeds of trust referred to by you in your examination-in-chief as being in book H of the records of Daviess County all attempted to be entered satisfied by R. L. Tomlin as cashier of the Daviess County Savings Association?

Answer. They are all signed by Mr. Tomlin as cashier of the Daviess County Savings Association.

302 Question. Did he have any power of att'y or other authority to sign the entry of satisfaction on the records, that you know of?

Answer. No.

Question. You don't pretend to know what efforts and control the directors may have exercised over the business and affairs of the bank after McFerran removed to Colorado?

Answer. No, sir; I never seen them exercise any.

Question. State what control of the business of the bank and its affairs McFerran exercised as president over the bank, by correspondence or otherwise, after he went to Colorado.

Answer. I think I have heard Mr. Tomlin speak of having received correspondence from Col. McFerran after his removal to Colorado in relation to the affairs of the bank. I remember also of Col. McFerran speaking to me, as stated in my examination-in-chief, in relation to the affairs of the bank when here on his visits.

Question. State whether you are recorder of Daviess County, or have any official charge or authority over book H referred to in your examination in chief.

Answer. No, sir; I am not. No, sir; I have not.

Question. State whether all you know about the deeds of trust in book H referred to by you in your examination-in-chief is what you have acquired by an examination of the same made within the last two or three days.

Answer. Most of it is; I had counted them some three months ago, but have not since.

Question. When did you first notice the mutilation of the record by Tomlin's entries of satisfaction in book H, referred to in your examination in chief?

303 Answer. My attention was specially called to his writing on the records shortly after the injunction in this case was obtained. I had seen his entries of satisfaction on the margin of the records before.

Question. Your knowledge of the deeds of trust in book H grows out of your reading and examining the same, nothing else, does it not?

Answer. Yes; and have went with him occasionally in cases where I was interested and seen him satisfy them.

Question. State whether you were present at Kingston, Missouri, when Frank & Darrow made the loan to Kenney referred to in your examination-in-chief.

Answer. I was not.

Question. Then you know nothing of your own knowledge of the terms and conditions of the loan from Frank and Darrow to Kinney, or the application of the money.

Answer. Nothing, except what I have stated that Mr. Tomlin said prior to the receipt of the money. No one connected with the bank ever spoke to me about the loan until after it was made.

WM. C. GILLIHAN.

Subscribed and sworn to before me on the day, at the place, and between the hours last aforesaid.

[SEAL.] ADAMS BALLINGER,
Notary Public, Daviess Co., Mo.

Term expires Aug. 9th, 1882.

Adjourned until February 26th, 1881, at 8 o'clock a. m., by agreement of parties, when the further taking of depositions is to be resumed at the same place in this behalf first aforesaid.

[SEAL.] ADAMS BALLINGER,
Notary Public, Daviess Co., Mo.

304 Pursuant to adjournment as above stated, parties met at the office of J. A. Holliday at 8 o'clock a. m., when by agreement, all parties being present and consenting thereto, the further taking of said depositions was adjourned to the office of Gillihan & Brosius, where the taking of said depositions was resumed; the taking of depositions pursuant to notice on the part of the defendant having been commenced at the office of J. A. Holliday, making it impracticable to resume said depositions at the office of J. A. Holliday.

[SEAL.] ADAMS BALLINGER,
Notary Public, Daviess Co., Mo.

SAMUEL T. BROSIUS, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

My name is Samuel T. Brosius; I am 33 years old, and reside at Gallatin, Mo., and my occupation is a lawyer. I have resided in Gallatin, Daviess Co., Mo., 31 years. I have known the defendant The Daviess Co. Saving Association ever since it was organized. Mr. Tomlin, I believe, has been cashier of the bank 7 or 8 years. All the officers of the bank that I know anything about is McFerran, president. During that time until this year Mr. Hemry has been president. In the summer of 1873 Col. McFerran, president of the bank, went to Colorado Springs, in the State of Colorado, and has resided there ever since. During the time referred to by me, Col. McFerran has been here at least once a year, and sometimes oftener, not exceeding 2 or 3 times in one year, and stayed here from 2 days to 2 weeks. Until within the last six months I have been in the bank almost every business day during the past seven years, and sometimes 5 or 6 times a day. Robert L. Tomlin has had charge of the moneyed affairs of the bank almost exclusively during that time. Robt. L. Tomlin has taken and released its securities all that time. I never saw any one else release one, but I think
305 I have seen a trust-deed or two that had been released by Col. McFerran. I have superintended the satisfaction of a number of trust-deeds, from 50 to 100, in which the bank was interested, and Robert L. Tomlin, as cashier of the Daviess Co. Savings Association, in ever' instance

entered satisfaction of the same on the margin of the record. I have known Robt. L. Tomlin in several instances to release trust-deeds where only part of the debt they secured was paid, and allow other parties to take a first lien, he then filing a second deed of trust in favor of the Daviess Co. Savings Ass'n, or taking personal security for the unpaid balance. From the year 1873 up to the time Mr. Tomlin left the bank I never knew or heard of any other person or officer acting or assuming to act for the bank (except as stated above), releasing or satisfying deeds of trust and mortgages, contesting or handling the assets of said bank, or having anything to do or say in relation to the business of the bank. I never knew or heard of the directors or the bank having anything to do with the investment of the funds of the bank or the release or transfer of the securities belonging to the bank. In May or June (I think it was) in 1879, Mr. P. S. Kenney, at Mr. Tomlin's request, made application to George W. Frank & Darrow for a loan of $10,000.00 to be secured by a deed of trust on Mr. Kenney's farm in Caldwell Co., Mo. Mr. Tomlin agreed to pay off all incumbrances then existing other than the debts due the Daviess Co. Savings Ass'n, to release all trust-deed, held by the Dav. Co. Sav. Ass'n, and allow Frank & Darrow to have a first lien in favor of parties loaning money through them on the farm of said Kinney, and that the Daviess Co. Savings Ass'n would take a second deed of trust for the balance of their debt not paid by the proceeds of said loan; and it was in pursuance of the above agreement that Mr. Darrow, of the firm of Frank & Darrow, visited Mr. Kinney, whom we (Mr. Tomlin and
306 myself) met at Kidder near Mr. Kinney's home. We all visited Mr. Kinney's farm to satisfy Mr. Darrow as to the security for the loan, and Mr. Darrow being satisfied that the farm was ample security for the $10,000.00, agreed to make the loan to Mr. Kinney, but the express agreement was that the loan was for the accommodation of the Daviess Co. Savings Ass'n, and that it would further the loan; and while it was not expressed that the Daviess Co. Savings Ass'n would guarantee the loan, it was understood that it would do so. Mr. Tomlin suggested to me that the bank would allow Mr. Darrow to sell the farm under the $10,000.00 trust, unless Mr. Kinney kept the interest paid up, and the bank would buy farm. Mr. Tomlin gave as his reasons for making the above arrangement that the bank needed some money; that Mr. Kinney could not pay it in any other way, and that by so doing the bank could not lose anything, except the expenses of obtaining the loan.

Cross-examination by def't' att'y:

When I said that Mr. Tomlin released the securities of the bank I had special reference to deeds of trust and mortgages, but generally to all securities held by the bank.

Question. Did you ever know him to release a security held by the bank when there was no money actually paid to satisfy the debt?

Answer. I don't believe I ever did, unless part of the debt or all of it was paid. The loan was not made at the time Mr. Darrow visited the farm for the purpose of inspecting it, but was made a few days afterwards. I was not present when the loan was actually made. I don't know anything about the directors of the bank, except by the card of the bank pub-

lished in the county papers. I was never present at the meeting of the directors that I remember of.

307 SAMUEL T. BROSIUS.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] ADAMS BALLINGER,
Notary Public, Daviess Co., Mo.

Term expires Aug. 9th, 1882.

THOS. J. BROWN, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

My name is Thomas J. Brown; my age is 48 years; I reside in Gallatin, Mo., and by occupation am farmer and dealer in real estate; have lived in Gallatin, Mo., for about sixteen (16) years; have known the Daviess County Savings Association since its organization; Robert L. Tomlin has been cashier since 1871 or 1872 till January, 1881. Since Mr. Tomlin has been in the bank I have had a great many transactions with the bank; I have been in the bank several times during each week for the last six or seven years, sometimes not more than once a month, but the bank was a common place of resort for me, and my relations with Mr. Tomlin were rather intimate. I was not intimate with other of the bank officers, as such, meaning the president and directors. All the transactions that I have had with the bank have been with Mr. Tomlin, as cashier alone. My business with the bank was in the giving of notes, deeds of trust, and other securities, and the satisfaction and release of the same, and the payment to and receipt by the bank of monied transactions. With one or two exceptions, Mr. Tomlin, the cashier, upon the payment or satisfaction of notes secured by real estate, has entered satisfaction upon the proper records of the county. Early in my transactions of

308 business with the bank, in one or two instances I secured to releases the signatures of R. L. Tomlin, as cashier, and Col. McFerran, as president, in the nature of a quitclaim deed. It was the custom and practice of the cashier, Tomlin, for the past seven years, to satisfy all deeds of trust and other securities paid by me for myself and my brother-in-law, W. E. Wirt, whose business I transacted for him, during his absence, with the bank.

(Witness is here shown book H of the record of trust-deeds of Daviess County, and his attention called to page 10 thereof.)

I recognize the deed on page 10 as being a deed of trust given by my brother-in-law, W. E. Wirt, and wife, to the Daviess County Savings Association. I find several entries on this deed in my handwriting. My recollection is that the whole debt secured by this deed of trust was not paid at one time, there being five entries of satisfaction on the margin. As a piece of land would be sold would be signed by R. L. Tomlin, cashier and trustee.

Question. What, if any, objections do you know was made by the directors or any other officers of the bank as to Mr. Tomlin satisfying deeds of trust and releasing securities of the bank from 1873 till January 1st, 1881, when Mr. Tomlin went out of the bank?

(Above question objected to as leading.)

Answer. Never heard of any. Never knew of the directors doing any-

thing in relation to the satisfaction or release of securities held by the bank. I was not supposed to know. I rec'on the directors held their own meeting and transacted their own business in their own way. As far as I ever knew Mr. Tomlin has had charge and control of all the business connected with the bank from 1873 to January, 1881. I think from 1873
309 to 1881 the directors of the bank were John A. Tuggle, James Hemry, H. C. McDougal—a year or two; Wm. M. Givens was for several years a director, but has not been for a year or two past. I think Mr. Tomlin was also a director as well as cashier. Mr. John A. Tuggle lived some 10 or 12 miles from this place, and is a farmer. Mr. Hemry lived near the line between Caldwell and Daviess counties, and was a money loaner, as far as I know. Mr. McDougal lived in Gallatin, and practiced law. Dr. Givens lived in Gallatin, practiced medicine. I never knew of these directors taking any interest in the conduct of the affairs of the bank except at their annual meetings, and I have reason to believe that they had occasional meetings of the directors from the summer of 1873 to Jan'y, 1881. I have not known any other person or officer of the bank than Mr. Tomlin releasing or satisfying liens or securities held by the bank, except in the two instances above referred to. Col. McFerran, president, has resided in Colorado Springs, Colorado, and has visited this place about once or twice a year since 1873.

THOMAS J. BROWN.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] ADAMS BALLANGER,
Notary Public, Daviess Co., Mo.

Term expires Aug. 9th, 1882.

I, Adams Ballinger, a notary public within and for the county of Daviess, in the State of Missouri, do certify that in pursuance of the annexed commission and notice, came before me, at the law office of J. A. Holloday and Gillihan & Brosius, in the city of Gallatin, in the county and State last aforesaid, Wm. S. Abell, Wm. C. Gillihan, Benton Miller, Samuel T. Brosius, and Thos. J. Brown, who were by me severally sworn to
310 testify the whole truth of the' knowledge touching the matter in controversy aforesaid; that they were examined and their examination reduced to writing, and subscribed by them respectively, in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and their said depositions are now herewith returned; and I further certify that said Wm. S. Abell, Benton Miller, Wm. C. Gillihan, Samuel T. Brosius, & Thomas J. Brown are residents of the county of Daviess, in the State of Missouri.

Given at Gallatin, in the county of Daviess and State of Missouri, this 26th day of February, 1881.

[SEAL.] ADAMS BALLINGER,
Notary Public, Daviess Co., Mo.

Term expires Aug. 9, 1882.

I hereby certify that the following are fees due me under the law in the above case:

To swearing 5 witnesses at 5c. each	25
To copying 18,560 words and figures, at 15c. pr. 100	27 84
To 7 certificates and seals, at 10c. each	70
To final certificate and seal	50
	$29 29

I further certify that the above amount is by the plaintiffs in this case.

[SEAL.] ADAMS BALLANGER,
Notary Public, Daviess Co., Mo.

311 In the United States circuit court, western div., western dist. of the State of Missouri, Kansas City.

ALBERT S. WEBB AND OTHERS, PLAINTIFFS,
against
THE DAVIESS CO. SAVINGS ASSOCIATION AND others, defendants.

Defendants' abstract of the evidence taken in this cause.

ROB'T L. TOMLIN, witness for the defendant, testified that the defendant bank was, on the 30th day of June, 1879, the owner of a deed of trust executed by P. S. Kinney and wife to M. A. Low, trustee for Leslie P. Barnum, to secure said Kinney's note to said Barnum for 3,000$, which note passed by assignment to the defendant bank. Said deed of trust was upon the following-described real estate, to wit: The southeast quarter of section 3, and the northwest quarter of the northeast quarter of section 10, and the northeast quarter of the northeast quarter of section 9, township 57, range 29, in Caldwell County, Mo., 320 acres, which deed of trust was filed for record in Caldwell County, February 10, 1872. And also shows that the bank was the owner of a deed of trust executed by said Kinney and wife to John Doolin, trustee of Nicholas Quirk, to secure the sum of $1,650 upon the following lands: Southeast quarter of section 3, and east half of northeast quarter of section 10, township 57, range 29, 240 acres; filed for record and recorded 8th January, '74.

Also a deed of trust executed by P. S. Kinney to Cyrus McLaughlin, trustee for Solomon Musser, on east half of northwest quarter and west half of northeast quarter of section 9, and south half of section 4, township 57, range 29, to secure the sum of $2,112.52; filed and recorded 17th November, 1873.

Also deed of trust from P. S. Kinney and wife to R. L. Tomlin,
312 trustee for bank, on south half of section 3 and south half of section 4, township 57, range 29, 640 acres, to secure $5,036.80; filed and recorded September 3, '74.

Also deed of trust from P. S. Kinney and wife to Gillihan and Brosius, trustees for Daviess County Savings Association, on south half of section 3, and south half of section 4, north half northeast quarter, and southwest quarter of northeast quarter, and east half of northwest quarter of section 9; east half of northeast quarter, and northwest quarter of northeast quarter,

and north half northwest quarter of section 10, all in township 57, range 29, 1,055 acres; also south half of northwest quarter and southwest quarter of northeast quarter of section 10, and northwest quarter of northeast quarter of section 9, all in towuship 57, range 29, 160 acres; in all 1,217 acres; filed for record and recorded 13th April, 1876, and to secure two notes, one for $2,444.83, and one for $2,444.83.

Also one deed of trust by P. S. Kinney to R. L. Tomlin, trustee for bank, on south half of section 4, east half of section 9, east half of northwest quarter of section 9, and north half of section 10, and northeast quarter of northwest quarter of section 10, township 57, range 29, 1,080 acres land; filed and recorded May 29th, 1875, to secure $8,013.13.

All the foregoing described deeds of trust and notes are cancelled by the bank's stamp as paid, in the following stamp indorsement, namely:

Daviess County Savings Association. Paid. Gallatin, Mo.

State if you know who cancelled them with that stamp, and when it was done.

313 A. It was done in August, 1879, either by myself or by Frank Clingen, under my directions.

Witness further states that said notes were not paid in money at the time said pay-stamp was put upon them. Witness states that there was no other or further payment of said notes and deeds of trust, except a contract made with one Darrow (agent of plaintiff), to wit: The contract was that Darrow was to loan Kinney $10,000; out of which money Darrow was to pay off for Kinney the Power deed of trust and some interest, and the judgment against Kinney held by the bank at Breckenridge, Mo., and a judgment held by estate of Thos. Ryan, deceased, vs. P. S. Kinney, and the remainder of the $10,000 loan the Daviess County Savings Association was to receive from the hands of Darrow for P. S. Kinney, which amount was $3,000, which I credited on the new note against P. S. Kinney. Afterwards Darrow sent me a draft for a small amount, which I credited on an indebtedness of said P. S. Kinney, which was not secured by deed of trust; it was a small sum. In order to bring about this state of things I agreed to enter satisfaction on the bank's deed of trust *vs.* Kinney, before referred to in my examination. This was all the bank received in consideration of releasing the bank's deeds of trust, and this was the reason for releasing them. The bank received no other or further consideration than that mentioned, and the deeds of trust and notes were cancelled with the bank's stamp, and the entry on the margin of the records of Caldwell County, Mo., was part of this transaction.

Witness says: I never had any power of attorney from the bank or its directors to enter satisfaction of any record, either in Caldwell County or elsewhere, or for any other purpose. The agreement made with Kinney and Darrow and myself was made by me alone; none of the

314 directors except myself knew anything about it. The directors there were James Hemry, J. A. Tuggle, James McFerran, and myself. They were elected January 1, 1879. I never consulted any of the directors about making the contract, and they knew nothing about it until long afterwards. The first time the matter was canvassed among the directors was in February, 1880. Hemry and Tuggle both live in the county and were in town frequently, but never broached the subject to them. I saw them frequently, but never broached the subject to them. I kept up a regular correspondence with Col. McFerran, twice a month

or oftener, and made statements of the condition of the bank every fifteen days to him, and transmitted them by mail. My standing instructions from him were to render him semi-monthly statements of the condition, and frequent requests to keep him posted, and when Mr. McFerran was here he urged me verbally; he urged me at different times, generally every time he was here, to inform him as to the business of the bank, and how it was getting along, as well after he went to Colorado as before. I did not notify him that these entries of satisfaction were made, or that they were intended to be made, until he asked me about them in February, 1880, nor did I inform him anything of the agreement until he came here in February, 1880, and asked me about it. I never had any conversation with Darrow about my authority. I never told him that I had any authority from the directors or any one else to enter the satisfaction on the records referred to, or to make the agreement. I simply told him I would do so, and he took my statement, and the matter was arranged as I have said. The directors notified me in February, 1880, that they would not approve my acts with reference to the Darrow loan to Kinney. I understood that they had just obtained information of the matter a short time previous.

315 In the spring of 1880 the directors ordered the lands of P. S. Kinney to be sold under the deeds of trust which I had undertaken to satisfy on the records. There was no necessity for the bank to raise the money by the transaction by means of the loan to Kinney by Darrow.

I never had any authority from the bank or its directors to cancel deeds of trust, make contracts in relation to their satisfaction, or to change them, or make contracts for the bank, or enter its securities satisfied on the records, except the authority that legally pertains to the office of cashier.

Witness says: I requested Kinney to make application to Frank & Darrow for a loan of $1,000 in order to get the Power deed of trust and the two judgments off the record. The Daviess County Savings Association is situated at Gallatin, in Daviess County, Missouri.

Cross-examination:

Witness says: There were branches of the bank's business that I did not manage. I never sold a piece of land owned by the bank and deeded it away, and was not in the habit of closing deeds of trust, such as collecting deeds of trust by foreclosing same, or by which the bank might get real estate on its hands, without first advising Col. McFerran or other directors of my intended action, and asking their opinion as to such a course. I never located correspondents, or decided in what banks in eastern cities funds should be deposited to draw against. After Col. McFerran removed to Colorado I sold land of the bank subject to his approval, advising the purchaser that unless McFerran approved the sale it was no contract. I corresponded with Frank & Darrow with a view to bringing about the loan by them to Kinney.

316 Witness says (p. 10): I was trying to get the indebtedness of Kinney to the bank in a better shape than it had been, and to secure for Kinney further time on indebtedness of his to other parties.

Witness says (p. 10): The paid-up capital stock of the Daviess County Savings Association at the date of the loan was $9,700. The shares were

$100 each. Fifty shares were owned by James McFerran; thirty-three shares by James Hemry; six shares by John A. Tuggle; two shares by H. C. McDougal; two shares by heirs Ed. H. Smith; two shares by Frank Clingen, and two shares by myself.

Re-examination:

Witness says (p. 12):

Q. You say in your cross-examination that one of your reasons for going into the transaction with plaintiffs' agents and Kinney, in relation to the $10,000 and attempting to release the deeds of trust, was because the transaction would not increase the indebtedness of Kinney to the bank. State whether or not the charge upon the lands was not increased $1,000 or more by the deed of trust made by P. S. Kinney and wife to D. W. McNair, trustee for G. W. Frank & Darrow in that transaction, the same lands upon which the Daviess County Savings Association held its liens.

A. The charge upon the lands was increased $1,000 by such transaction, but in making the arrangement I had not contemplated the filing of such a deed, and did not know such an one was to be filed until the time of filing the same.

On same page witness says: The consideration for the deed of trust executed by Kinney and wife to McNair, trustee for Frank & Darrow, was for commissions in procuring loan from plaintiffs to Kinney.

Witness JOHN A. TUGGLE testified as follows:

317 I have been a director in the Daviess County Savings Association since its organization in 1865. James Hemry was elected president of the bank for 1879, and R. L. Tomlin cashier, on the first day of January, 1879. I live nine miles from Gallatin. I am at Gallatin about once a month, and sometimes two times in a month, sometimes staying a week at a time. Was in the bank frequently. I never gave much attention to the affairs of the bank. I did give it some, however. R. L. Tomlin, cashier, never consulted me with reference to entering satisfaction of record on deeds of trust, and I never knew anything about his doing so until after this case came up. The board of directors never authorized him to enter such satisfaction. I never knew anything about the loan of Frank & Darrow to Kinney until after it was made. I heard of it for the first time about a year ago, that Tomlin had agreed to release and had assumed to release by entering satisfaction of record in Caldwell County the Kinney deeds of trust, and give to plaintiffs in this case a prior lien. Tomlin never consulted me with reference to the matter, nor was there any action in reference to the matter prior to my hearing that it had been done by Tomlin. I am not acquainted with Lew E. Darrow. I never saw him that I know of. No one ever consulted me with reference to the satisfaction of the Kinney deeds before Tomlin had entered satisfaction; was presiding judge of the county court of Daviess County in 1879, and attended the regular sitting of the court; was not absent from the county in that year. I never examined the books, money, or notes of the bank. I saw Col. McFerran and James Hemry examine the books, notes, papers, etc., before this loan was made. Could not say how
318 many times they examined them. Sometimes I saw McFerran ex-

amine them by himself, and sometimes Hemry would examine them by himself. I could not say just how many times I saw Hemry there examining the books. I could not say how often I saw either of them examining books, papers, etc.

Cross-examination:

I went back on the transaction as soon as I heard of it, at least as far as my feelings were concerned. I do not think I did anything about it until I met the directors; did not talk to any one but the directors about it. I think the meeting of the directors was in February, 1880. Mr. Hemry spoke to me about the transaction some time before the meeting of the board.

Re-examination:

The presumption with me was that he (meaning Tomlin) would transact it (the business) within the law. I made no calculation that he would exceed his authority. I did not desire or expect him to exceed his authority. I think, upon reflection, that it was in February, 1880 (that the board met). I only heard of the transaction first a short time before that meeting in February. The members of the board (at that meeting) agreed to resist the transaction between Darrow, Kinney, and Tomlin, as I understood from them. And I further understood that they ordered the sale of the Kinney land under the old deeds of trust. I was there. It was agreed to resist the transaction. I do not think any record was made of it. It was the opinion of all of the directors present to resist the transaction.

P. S. KINNEY testified:

I am acquainted with the land' in controversy, and reside on them, and have resided on them since 1859. In the whole number of acres cov-
319 ered by the deeds of trust there are 1,240 acres; I am acquainted with the buildings on the land; I built them; the value of the residence and buildings on the land is about $12,000; the land, exclusive of buildings, is worth $27 per acre; the description of the land the buildings are on is: the east half of the southeast quarter of section three, township fifty-seven, range twenty-nine, in Caldwell County, Missouri. On the 30th day of June, 1879, I was indebted to James D. Powers in the sum of $5,000, which was secured by deed of trust on the south half of section three, east half southeast quarter of section four, township fifty-seven, range twenty-nine, being 400 acres; and at the same date I was also indebted to the defendant in the sum of $3,000 and accumulated interest, which was secured by deed of trust given M. A. Dow, trustee for Leslie P. Barnum, on the southeast quarter of section three and northwest quarter of northeast quarter and west half of northwest quarter section nine, all in township fifty-seven, range twenty-nine, containing 320 acres, and for other indebtedness due said bank. At this date I was also indebted to the Exchange Bank of Breckenridge, Missouri, which held a judgment against me in the amount of $1,129.95, and was also indebted to Thomas Ryan by judgment in the sum of $775.06; neither the Powers debt, the Breckenridge Bank debt, nor the Thomas Ryan debt were not being pressed for collection at that time, to wit, June 30, 1879. The loan of $10,000 made by plaintiffs, through their agent Darrow, of the firm of Frank & Darrow, to me was not made to prevent sale of lands under the

last-mentioned items of indebtedness. There was no representations made by any agent of R. L. Tomlin or myself, to my knowledge, that any of said last-mentioned indebtedness was being pressed for collection on June 30, 1879. This loan was not made to prevent the sale of my lands,
320 and there was no such representations made to Mr. Darrow, plaintiffs' agent, at the time said loans was made or at any time.

Q. State what you know, if anything, in relation to yourself, R. L. Tomlin, or any of the officers or agents of the defendant bank confederating and conspiring together to destroy the plaintiffs' security on any of said lands at any time; state fully your knowledge in relation to this matter.

A. I know of no such attempts, and have no knowledge of anything of the kind. The Daviess County Savings Association, on the 30th day of June, 1879, was located in Gallatin, in Daviess County, and was doing business there. The loan (from Frank & Darrow) was closed at Kingston, Caldwell County, Missouri. The deed of trust to secure this loan of $10,000 of Frank & Darrow was prepared at my house in Caldwell County; the notes were signed at Kingston; Lew E. Darrow and R. L. Tomlin, of Gallatin, Missouri, were present when said papers were prepared at my house, and they were present when said papers were executed at Kingston, as before stated, Darrow requiring all of the judgment aforesaid to be entered satisfied before any money was paid over. I never had any conversation with Mr. Hemry or any person connected with the defendant bank except Mr. Tomlin prior to the time it (the lease) was made; I am on intimate terms with Tomlin, and have been for a number of years; Lew E. Darrow, of the firm of Frank & Darrow, acted as agent of the plaintiff in making the loan to me of $10,000; I agreed to pay Frank and Darrow $1,000 as commission for making this loan of $10,000 to me; I executed my notes to them for that amount, and secured
321 them by deeds of trust, second lien only to the lien to plaintiffs on same land included in plaintiffs' deed of trust which included the improvements, and was on 1,080 acres of said land. The deed of trust to plaintiffs and the deed of trust to Frank & Darrow was both on 1,080 acres of the 1,240 acres of land owned by me and before referred to. I paid the first installment of interest on the $10,000 loan to plaintiff on or about January 1, 1880. Tomlin sent the interest in on my request, and it was afterwards charged to me in my settlement with the bank. I sent the notice I had received from Frank & Darrow to Mr. Tomlin, and requested him to pay the interest, which he did, as above stated. Neither Mr. Hemry or any other officer of the bank knew anything of the payment except Tomlin. I gave my note for and secured the loan made by plaintiffs to me by deed of trust on my land, and part of the money, I know, was applied in payment of my debts. I left the matter to Mr. Darrow and Tomlin to complete. I have stated that the money was a detriment to me because I was getting the money from Powers at eight per cent., and he had agreed to take less if the rate of interest came down in the country. This was the only reason why it was a detriment, as the other debts paid were bearing ten per cent.; that is, the Ryan and Exchange Bank Breckenridge judgments. The payment of these debts was no detriment to me.

Witness JAMES HEMRY testified:

In 1879 I held the position of president and director in the Daviess County Savings Association, of Gallatin, Mo. I first held the position of director in said bank in 1872 or 1873, and have occupied that position at all times since then. The first I knew of the loan of $10,000 of plaintiffs to Kinney was some time in February, 1880; had not been consulted by Kinney or Darrow (plaintiffs' agent) or R. L. Tomlin about the
322 loan at the time it was made or prior or since that. Did not learn anything in relation to the transaction until February, 1880, and then it was not through Kinney, Darrow, or Tomlin. The organization of the bank has been kept up continually since I was first made director in 1872, till the present time. I was in and about the bank from one to three days a week in 1879, except the month of August. I was elected president of the bank January 1, 1879, at which time the arrangements were that Mr. Tomlin, the cashier, was to make his reports and statements semi-monthly to Col. McFerran and myself. McFerran was, by correspondence, to help to direct and superintend the affairs and business of the bank. I was to assist as well as I could; not being an expert in the business, I was to give what attention and assistance I could here; the reports to be made to McFerran, at Colorado Springs. Tomlin was present and consented to this arrangement, under which I called in the bank about as often as above stated, and consulted and advised in any business that was on hand of the bank's. I consulted with Tomlin, cashier, and on matters of importance that would arise that came to my knowledge, I would advise him to write to McFerran for instruction before taking any action. (Tomlin corresponded with McFerran.) I have seen him writing letters to McFerran on the business of the bank, at least he so stated to me at the time. Though I think Tomlin has read some of the letters about the business of the bank to me; I know of his receiving letters from McFerran about the business of the bank frequently, and have read some of them myself. I know that he (Tomlin) was making reports, as I understood, regularly, and he made reports to me.

Q. State whether or not Tomlin, as cashier, was authorized by
323 you, or the *to*her directors to your knowledge, to exercise any power or authority over the business affairs of the bank, other than he was authorized by virtue of his office of cashier.

A. We never delegated any power to him, or gave him any authority to do anything, only by virtue of his office. He was never authorized to release securities or make contracts. The bank made him cashier, and never gave him any authority, except as was conferred by the office upon him. Neither the president or the board of directors ever ratified or acquiesced in said transaction. On the contrary, the bank has rejected it, and determined so to do on the first meeting of the board of directors after it had came to their knowledge, which did not exceed a week or ten days after it had come to the knowledge of the individual directors and stockholders.

Cross-examination:

A. The board of directors have never made any rules and regulations in relation to the cancellation of securities or approval of loans, to my knowledge. I thought the law did regulate the duties of officers of the bank. I don't know whether Tomlin released securities or passed on the sufficiency

of them exclusively. He has not passed on loans exclusively since I was elected president of the bank on January 1, 1879.

Re-examination:

I know of no necessity of calling the board of directors together prior to 1879 to consider the loans or discounts of the bank and the securities for the same, or the releasing of the securities. There was no difficulty arising in such matters during the time I was director. From 1873 to 1879, while McFerran was president, the business proceeded smoothly and without trouble. Since I have been director the organization has been
324 kept up regularly, and the officers elected annually. As director I discharged such duties to the bank as I thought was necessary for the interest of the bank. The first full examination of the discounts, etc., of the bank we made in June or July, 1879. We made an examination of all the discounts and indebtedness of the bank of all kinds. I had knowledge of the most prominent debts due the bank prior to the time I was elected president in 1879, and the manner in which they were secured.

ROBERT L. TOMLIN, by his second deposition, testified:

Q. Please state what position you held, if any, in the defendant corporation, the Daviess County Savings Association, of Gallatin, Daviess County, Mo., by what authority you held the same, and for how long a time you occupied that position and discharged its duties.

A. On June 10, 1870, I was appointed acting cashier of the defendant bank, the Daviess County Savings Association, and served as such until January 1, 1872, at which time I was elected cashier, and served as such until January 1, 1881. I held the position of cashier by the authority of the vote of the board of directors, and discharged the duties of that position for nine years, from January 1, 1872, to January 1, 1881.

Q. If in answer to interrogatory third you say you were cashier of the above Daviess County Savings Association, please state whether you at any other time held or discharged the duties of any other position with respect to said association at any time; and, if so, what that position was, and what the duties you discharged.

A. I never occupied any other relation to the Daviess County Savings Association except that of acting cashier and cashier, as stated above.

325 Q. Who were the officers of the Daviess County Savings Association during the time you were cashier?

A. James McFerran was president most of the time, and James Hemry, John A. Tuggle, James McFerran, Wm. A. Given, and for a portion of the time Henry C. McDougal, and Edward H. Smith were directors.

Q. Was there any such officer as general manager or general agent of said association; and, if so, who was such manager or agent?

A. There was no such officer as general manager, agent, or director, known as such, but James McFerran, by common consent of the directors and stockholders, exercised all the authority that a general manager, agent, or director might have used whenever he chose to do so, and as in his judgment circumstances required from time to time.

Q. What authority, if any, did you have to discharge any duties with respect to said corporation, except the duties of cashier?

A. I had no authority whatever in respect to any of the duties of the corporation except that attached to the office of cashier.

Q. Were you present at the time the loan by complainants to Patrick S. Kinney was consum'ated, and at the time the deed of trust by Kinney to them was executed? And, if so, please state who was present representing complainants; whether at that time any run was being made or threatened upon the said savings association; whether or not at that time the association was in great or pressing need of money for any purpose, and what position at that time you held with respect to said association, and whether you were present at the place where the loan to Kinney was being consum'ated by direction of said corporation or on your own motion.

326 A. I was present when the deed of trust was executed by Kinney to the complainants, and was present when the loan was consum'ated by the delivery of the deed of trust. Lew E. Darrow, of the firm of Geo. W. Frank & Darrow, loan agents, of Corning, Iowa, was present representing the complainants. There was at that time no run being made upon the association and none threatened. The association at that time was indebted to Daviess County in the sum of $. The county court had requested that this sum be paid, and while the bank could have used that amount of money, there was no great pressing need of money, and no urgency on the part of the county court in its demands. At that time I was cashier of the association. I consulted no one in reference to my presence at the consum'ation of the loan to Kinney, but went of my own accord.

Q. Please state whether at the time you entered the pretended satisfaction of the various deeds of trust held by said association on Kinney's real estate in Caldwell County, Mo., whether or not the debts secured by said deeds of trust, or either of them, or any part thereof, had been paid; and whether or not at that time any arrangement had been or was made for the payment of the same; and, if so, state particularly as to what payment had been made, or was to be made; and whether or not the complainants, or their agent, and the said Kinney, or either of them, knew the circumstances attending said pretended entries of satisfaction and the reasons why the same were entered.

A. At the time of the entry of satisfaction of all deeds of trust held by said association on Kinney's real estate, by me, none of the debts secured thereby, or any part of them, had been paid. Upon completing the entries of satisfaction by me $3,000 being a part of the money loaned by complainants to Kinney was handed to me by Lew E. Darrow,

327 complainants' agent, at the request of P. S. Kinney, which sum was applied by me in part payment of the existing indebtedness of P. S. Kinney to the Daviess County Savings Association. At the same time P. S. Kinney executed to the Daviess County Savings Association a new deed of trust conveying the same lands as security for his indebtedness, which last deed of trust was filed for record immediately after the cancellation of the old deeds of trust, and entry of satisfaction thereof, and the filing of the two deeds of trust to complainants. It was understood between Lew E. Darrow and myself (Mr. Darrow representing the complainants) and P. S. Kinney that the deed of trust in favor of complainants for $10,000 and the deed of trust for $1,000, wherein George W. Frank and Darrow are the beneficiaries, should be filed before and should take precedence as liens on all the lands of P. S. Kinney, over the new deed of trust filed at

the time by me, in favor of the Daviess County Savings Association. The circumstances attending the entire transaction were talked over by Mr. Darrow, for the complainants, Mr. Kinney and myself, and the reasons for the entry of satisfaction were known to them at that time.

Q. To whom did Kinney pay the money he borrowed from complainants? And state whether or not the deed of trust and judgments paid thereout belonged to said association, and state whether or not said complainants knew who were the owners of said deeds of trust and judgments.

A. By direction of P. S. Kinney Lew E. Darrow paid to the clerk of the circuit court of Caldwell County a balance due on judgment in favor of the Exchange Bank at Breckenridge, Mo.; also a judgment
328 against P. S. Kinney in favor of the estate of Thomas Ryan, deceased, with the costs in said judgments; also by direction of P. S. Kinney Lew E. Darrow retained money of the proposed loan amounting to $5,200 for the purpose of paying a debt due James D. Powers and secured by a deed of trust upon a portion of the land of P. S. Kinney, heretofore mentioned, which debt was afterwards paid Powers by Darrow in pursuance of Kinney's directions, and the balance of said loan, $3,000, was paid to me, as above stated, by Darrow at the request of Kinney, and was by me applied as a credit on the indebtedness of P. S. Kinney, to the Daviess County Savings Association. The deed of trust to Powers did not belong to the Daviess County Savings Association, neither did the Ryan or Breckenridge bank judgments against P. S. Kinney. Complainants, through their agent, Lew E. Darrow, knew who owned the debt secured by the deed of trust mentioned and said judgments, and said Darrow saw the record of the judgments and deed of trust, and knew the bank had no interest in those claims.

Q. Please state whether or not the complainants or their agent at the time they loaned Kinney the said sum of $10,000, and at the time they paid over the same on said loan, knew that the deeds of trust held by said savings association were unpaid, and whether or not they knew that said pretended entries of satisfaction of said deeds of trust were made without payment or satisfaction.

A. Lew E. Darrow, agent of the complainants, knew that no payment had been made on the amount secured by the deeds of trust held by the bank at the time the loan was made to Kinney, and at the time the entries of satisfaction were made by me Darrow knew that the debts secured by those deeds of trust had not been paid.

Q. State, if you know, what position James H. B. McFerran
329 occupied with respect to said savings association, and where he and the various officers of said association resided in June, 1879.

A. James H. B. McFerran was a chief stockholder of the bank in June, 1879; he resided at Colorado Springs, Col. He was neither an officer nor director of the bank, the laws of Missouri excluding him from such position by reason of his being a non-resident of Missouri. Col. McFerran was in frequent correspondence with me in reference to the business of the bank; was receiving from me semi-monthly statements of the condition of the bank, and was understood by all the directors and stockholders to be supervising and looking after the welfare of the institution. All the officers and directors of the bank resided in Daviess County, Mo., in June, 1879.

Q. What examination, investigation, or inquiry, if any, the plaintiffs

made as to or into the extent of your authority as cashier of the Daviess County Savings Association, as to your connection or participation in the ordinary course of business of said defendant, at or before the making of the pretended contract and transaction in relation to the plaintiffs' loan of $10,000 to one P. S. Kinney, and the pretended release of the said Kinney's indebtedness to defendant on the said Kinney's real estate made by you on the 29th day of June, 1879.

A. At the time of making the loan and before Lew E. Darrow agreed to make Kinney said loan, said Darrow fully acquainted himself with the condition of the real estate of P. S. Kinney, both with respect to the title thereof and with respect to all existing liens thereupon, and agreed to make said loan to Kinney only upon the condition that said loan should be a first lien upon the lands of said Kinney. In investigating the condition of Kinney's real estate Lew E. Darrow learned from me that the Daviess County Savings Association was the legal owner and holder of all
330 liens of record upon the lands of P. S. Kinney, excepting the deed of trust in favor of James D. Powers, and the judgments in favor of the Exchange Bank of Breckenridge, Missouri, and the judgment in favor of the estate of Thomas Ryan, heretofore alluded to. Lew E. Darrow inquired of me who would satisfy upon the records the deeds of trusts belonging to the Daviess County Savings Association, in order that he might make the loan to Kinney and file the deeds of trust to secure the same, which should be a first lien upon the lands of Kinney, and I told him that upon payment of the two judgments herein alluded to and the deed of trust herein referred to, in favor of Powers, out of the money proposed to be loaned to Kinney, and a payment, too, of the balance of said loan into my hands after the satisfaction of the three debts above referred to, which payments were all to be made by Kinney or by Darrow at the request of Kinney, I would satisfy all record liens on the land of Kinney of which the Daviess County Savings Association was the owner and holder; and I told Darrow I believed I had the right or authority to make such satisfaction in the way proposed. I do not know whether Darrow made any other examination, investigation, or inquiry as to or into the extent of my authority as cashier of the Daviess County Savings Association, or as to my connection or participation in the ordinary course of the business of said bank, either at or before the making of the contract and transactions in relation to the loan of $10,000 to P. S. Kinney. Darrow learned from me, in the course of our conversation in relation to the loan to Kinney, that I would take from Kinney a new deed of trust to secure his indebtedness to the Daviess County Savings Association in lieu of
the old deeds of trust that I was to satisfy upon the records, and
331 that I would file such new deed of trust upon the lands of Kinney after he had filed deeds of trust to secure the proposed loan of $10,000 to Kinney, but, so far as I know, made no inquiry as to my authority to carry out such proposed action further than to inquire of me, as above stated, who would make such satisfaction upon the records.

Q. What inquiry, if any, was made by the plaintiffs or their agent in relation to the officers of said defendant other than yourself before or at the time of making such pretended contract of satisfaction referred to in preceding interrogatory?

A. Lew E. Darrow, agent of complainants, made no inquiry whatever

of me in relation to the officers of the Daviess County Savings Association other than myself prior to or at the time of said contract.

Q. State whether or not the plaintiffs, by themselves or agents, were ever at the defendant's place of business, at Gallatin, Missouri, at or before the pretended contract and transaction was entered into; and what inquiry, if any, they made in relation to the course of business of said defendant, and in relation to your receiving payment and entering deeds of trust satisfied as its cashier belonging to the defendant other than those in controversy.

A. I do not remember having any conversation with Mr. Darrow in relation to the loan to P. S. Kinney, at the banking house of the Daviess County Savings Association, but think that everything that passed between Darrow and myself in reference to the making of said loan took place during a trip to P. S. Kinney's residence, for the purpose on the part of Darrow of examining and viewing Kinney's lands, I accompanying Darrow on said trip and on the trip to Kingston, the county seat of Caldwell County, at the time the transaction now in controversy was completed. In
332 relation to the Kinney loan nothing was ever said or done at the bank prior to the completion of the transaction in relation to it by Darrow. No inquiry was made by plaintiffs or their agent Darrow in relation to the course of the business of the bank in reference to the satisfaction of deeds of trust by the bank other than the inquiry by Mr. Darrow as to who would satisfy the records of trust-deeds upon Kinney's land in Caldwell County, Missouri, held by the bank.

Q. State whether or not, and what, if anything, was the course of business of the defendant in relation to entering debts due it paid and its liens satisfied. Was it or was it not the course of business of the defendant to enter indebtedness due it paid and its securities released only on receiving actual payment and satisfaction; or was it the course of business of the defendant to enter its indebtedness due it paid and its securities satisfied without actual payment or satisfaction, in matters other than the pretended contract and transaction in controversy?

A. It was my custom as cashier of the bank to enter satisfaction upon the records of deeds of trust held by the bank upon payment to the bank of the money due thereon, but not otherwise. I do not remember any instance, except in the case now in controversy, of having entered satisfaction upon the records of deeds of trust held by the bank for the purpose of allowing new or other liens to be filed which should take precedence of the liens held by the bank, or of entering such satisfaction without the actual payment of the liens satisfied, and such custom of mine was the course of business of the bank, namely, to satisfy no liens without actual payment of the same.

Q. What consideration, if any, passed from the plaintiff to the defendant for the pretended contract and transaction referred to? State what money, if any, the defendant received of the proceeds of the loan by plain-
333 tiffs to Kinney; on whose account it was paid to and received by, defendant, the plaintiffs, or said P. S. Kinney.

A. There was no consideration paid the bank by plaintiffs as an inducement for the making of the contract and transaction referred to. Of the proceeds of the loan to P. S. Kinney by plaintiffs the bank received $3,000, as previously stated by me, and said money was paid to me, as

cashier of the bank, by Lew E. Darrow, at the request and direction of P. S. Kinney, to apply on the indebtedness of said Kinney to the Daviess County Savings Association.

Q. What notes and deeds of trust on P. S. Kinney's lands, if any, were made by P. S. Kinney and wife, or either of the plaintiffs, and one Lew E. Darrow, or said Darrow and one George W. Frank, as copartners, and on what account, and for what consideration?

A. P. S. Kinney executed upon the lands of P. S. Kinney a deed of trust to the plaintiffs to secure the sum of $10,000, that being the amount loaned to P. S. Kinney by complainants through their agent, Darrow. P. S. Kinney also executed upon the same lands of P. S. Kinney a deed of trust for $1,000 in favor of George W. Frank and Darrow in consideration of their services in procuring the loan made to Kinney by the plaintiffs by their agent, Darrow.

Q. State whether or not the plaintiffs' deed of trust from Kinney and wife was made a first lien on all of said Kinney's lands, and the deed of trust from Kinney and wife to Lew E. Darrow, or Frank & Darrow, was made a second lien on all of said lands, superior to all other liens thereon except the plaintiffs', and the deed of trust from Kinney and wife to defendant to secure the sum of about $36,500.10 was made a third lien on all of said lands, junior and inferior to the liens aforesaid, with the knowledge of plaintiffs and as a part of and in consideration of the
334 pretended contract and transaction sought to be enforced by the plaintiffs in this case.

A. By agreement between Lew E. Darrow, plaintiffs' agent, and myself it was understood and agreed that upon satisfaction being made by me upon the records of Caldwell County of all deeds of trust held by the Daviess County Savings Association upon the lands of P. S. Kinney, said Darrow, as agent of plaintiffs, would file the deed of trust for $10,000 upon the lands of P. S. Kinney in favor of plaintiffs; also the deed of trust upon the lands of P. S. Kinney in favor of George W. Frank and Darrow, for $1,000, which two deeds of trust would be a first lien upon all the lands of P. S. Kinney; and that any deed of trust in favor of the Daviess County Savings Association upon the lands of P. S. Kinney should be filed by me after the filing of the said two deeds by Darrow, and should be inferior to and subject to the liens of plaintiffs and Geo. W. Frank & Darrow, and such agreement between Darrow and myself in reference to the order and precedence of the liens upon the lands of Kinney was proposed by Lew E. Darrow as a necessary condition of the loan made by plaintiffs through him to Kenney, and was carried out in so far as my action was concerned, for the purpose of enabling Kinney to obtain said loan from plaintiffs, and in consum'ation of the contract sought to be enforced in this case.

Q. Is there anything you know which would be material to the issues herein. Please state the same as particularly as if particularly interrogated in relation thereunto.

A. Some correspondence passed between myself and Geo. W. Frank and Darrow in reference to the loan they were proposing to make or procure for P. S. Kinney, and in writing to Geo. W. Frank & Dar-
335 row in relation to said loan I stated to them I had no doubt of my authority to enter satisfaction upon the records upon Kinney's

lands then held and owned by the bank, giving as a reason for such conclusion that I was cashier of the bank which owned said deeds of trust. My intention in so writing was to convince them (Frank & Darrow) that a satisfaction of the records by the Daviess County Savings Association, the then legal owner and holder of said liens, would be good and valid in law, and that it would not be necessary for the previous holders of said liens, from whom the Daviess County Savings Association had bought them, to join in any entry of satisfaction of same on the records of Caldwell County, and I was not intending in so writing to Frank & Darrow to convey to them the idea that the directors or stockholders of the Daviess County Savings Association had authorized me to make the agreements and contract necessary to procure the loan for Kinney through them. The question of authority in me to bind the Daviess County Savings Association, by making the contract then under discussion relative to the loan to Kinney, was not raised between Darrow or Frank & Darrow and myself, and seems not to have been thought of either by them or myself. All that was done by me in reference to the matters now in controversy between the parties to this suit was done without consultation with any other officer or director of the bank, and without the knowledge of any other officer or director thereof, and a knowledge of such transaction did not come to the directors and stockholders for some months after the same had been completed. It did not occur to me that I had exceeded my authority as cashier until I was informed by the directors and stockholders that my action would not be confirmed, about the beginning of the year 1880, etc.

JAMES H. B. MCFERRAN testified:

336 Q. What is your name, age, occupation, and place of residence, and how long have you resided at your present residence?

A. My name is James H. B. McFerran; age, 61; occupation, a banker; residence, Colorado Springs, Colorado; have resided at Colorado Springs for the last eight years.

Q. State if you are acquainted with the parties to this suit; and, if so, how long you have known them.

I am not acquainted with the plaintiffs in this suit, nor with William M. Clevenger, defendant; have known defendant Martin for more than twenty years, and the Daviess County Savings Association since its organization, in 1865.

Q. State what you know, if anything, about the organization of the Daviess County Savings Association; when and where it was organized; its capital stock; your connection with said association; if you were connected with it, how long and in what capacity you were or are now connected with said association.

A. The Daviess County Savings Association was organized in 1865, at Gallatin, Daviess County, Missouri, with a capital stock of about $5,000, which has been increased to near $10,000 paid-up capital. I was connected with the association as principal stockholder at the time of the organization, and have at all times and still own a majority of the stock in my own right. I was also president of said association from its organization until the first of January, 1879. I was also general manager of the institution from its organization, and still act in that capacity.

Q. If there has been a general manager of said institution, please state who was such general manager and by what authority such manager exercised such duties.

337 A. I was the general manager of said association from its organization, with the consent and acquiescence of the stockholders and directors of said association.

Q. When did you remove from Gallatin, Missouri, to your present residence; and where have you lived since; and since then what have been your relations with said association? And if you have had any control of its affairs, please state in what manner you exercised such control.

A. I did not remove from Gallatin, Missouri, to my present residence in Colorado Springs, but removed from Chillicothe, Missouri, to my present residence, where I have lived since 1873, and since my removal to my present residence my relations with said association were as director and president until January 1, 1879, and general manager of said association to the present time. I retained and exercised the control of the affairs of said association by correspondence, through the telegraph and mails, and by visiting the institution once a year and examining its condition, with the exception of the year 1879, when, owing to indisposition, I procured George W. Trimble, a bank expert, to visit the bank and report its condition to me for the year 1879. He did so in January, 1880. The correspondence in relation to the affairs of the association were conducted with the cashier of the association.

Q. Who succeeded you as president of the association, if any one?

A. James Hemry succeeded me on or about the first day of January, 1879, and is still president of said association.

Q. Please state, if you know, what position R. L. Tomlin held with

338 respect to said association; how long he was thus connected with the same; and what duties he was authorized to perform, and what instructions he had, if any, in regard to the management of the affairs of said bank.

A. R. L. Tomlin held the position of cashier of the Daviess County Savings Association from 1870 to the first day of July, 1880. He was authorized to perform the duties of cashier, usually pertaining to that position, and was authorized to receive deposits and loan the funds of the institution, and take securities for the same at the counter in the ordinary routine of business, subject to my approval or the approval of the board when brought to our knowledge by said cashier. Said cashier was instructed, upon my removal to Colorado, to report fully the business of the institution to me by mail or telegraph, and in matters of importance to the association he was instructed by me to report the same to me before taking action, and upon receiving my instructions he was authorized to act, but not otherwise. His instructions were to do the ordinary routine business of the bank at the counter without first reporting the same to me, but subject to my approval or the approval of the board of directors; further than this he had no instructions or authority to act for the bank without first obtaining the consent of the board of directors or myself.

Q. If said Tomlin ever had any authority, as manager or otherwise, to discharge any duties with respect to said association, or the management or disposition of its property, other than those you have described, please state the same fully.

A. He had no authority, as manager or otherwise, that I know of, to discharge any duties with respect to said association or the management or disposition of its property, other than such as legitimately grew out
339 of his position or his office as cashier, and arising out of the instructions before stated.

Q. State whether or not you visited the association at any time between May, 1879, and February, 1880, and, if so, when; and, what report, if any, Tomlin made to you of the loan of any money by complainants to Kinney, or of said pretended entries of satisfaction of the deeds of trust held by the said association of the said Kinney's land. If no such report was made, please state fully and particularly how you became apprised of said transaction, and what steps, if any, were then taken to assert the rights of said association in the premises.

340 A. I did not visit the Daviess Co. Sav'gs Association at any time between May, 1879, and February, 1880, but sent Mr. Trimble to visit the institution between said dates, as before stated. I visited the institution in February, 1880, and as soon as I obtained information of the contract and transaction in relation to Kinney's loan and the release of the association's security on Kinney's land. Tomlin never made any report to me, either through Mr. Trimble, by mail or telegraph, or otherwise, until I called on him at the bank, in February, 1880, after having had the records of Caldwell County, Missouri, examined, and ascertained for the first time what Tomlin, the cashier, had done in relation to entering satisfaction of the association's deeds of trust on said Kinney's lands, and in connection with the complainants' loan to Kinney. I first learned through Mr. Trimble, in January, 1880, that Tomlin claimed there was a deed of trust on Kinney's land for $10,000.00 senior and superior to the deeds of trust of the Daviess County Savings Association, but nothing in relation to the pretended entries of satisfaction of the association's deeds of trust on the records of Caldwell County, Missouri, or the complainants' loan to Kinney. As soon as I learned through the above of the superior lien claimed by Tomlin, I had the records of Caldwell County, Missouri, examined by J. A. Holliday, esq., and as soon as I found their true condition and what Tomlin had done, I went immediately to Missouri, and a meeting of the directors was held at the bank, in Gallatin, Mo., in which the matter was investigated, and as soon as its condition was known to them it was unanimously rejected and repudiated. I was present at said meeting, and directions were then and there given to James Hemry, the president of said association, to foreclose the
341 bank's original deeds of trust on said Kinney's land by advertising the same under the power of sale contained therein.

Q. Please state what action was taken by said association, its officers, directors, and stockholders, in relation to the transaction mentioned in your answer to interrogatory nine.

A. They unanimously rejected and repudiated Tomlin's action in entering satisfaction of the defendants' original deed of trust, and his entire action in relation to the loan of $10,000 by the complainants to said Kinney, and his connection therewith, and also the responsibility of the bank therefor.

Q. Please state what, if anything, was done by said association, or its directory or officers, to approve or ratify the action of said Tomlin in relation to said pretended entry of satisfaction of said deeds of trust.

A. There was nothing done by said association or its directory or officers to approve or ratify (other than by said Tomlin) the action of said Tomlin in relation to the said pretended entry of satisfaction of Kinney's deeds of trust to the association, but the same was rejected and repudiated, as before stated, by said stockholders, directors, and officers of said association other than said Tomlin.

Q. If you know anything material to the matters in issue herein concerning which you have not been interrogated, please state the same as fully as if thereunto particularly interrogated.

A. Deponent states in answer to said interrogatory that said Tomlin, as cashier of defendant, never had any authority directly conferred on him, or arising by implication from the ordinary course of business of
342 the defendant, to cancel the obligations due it, or to enter its securities or liens satisfied without actual payment thereof, to the best of my knowledge and belief, and such action by said Tomlin, if in fact existing prior to the transaction in controversy, was without the knowledge and consent and never ratified, confirmed, or acquiesced in by the defendant, its officers or directors, other than said Tomlin, to the best of my knowledge and belief; that said Tomlin was never authorized by the defendant or its agents to make the contract or enter said Kinney's deeds of trust to the defenda't satisfied, or to cancel his indebtedness to the defendant, in connection with complainants' loan to said Kinney or otherwise, and said proceedings have never been confirmed, ratified, or acquiesced in by the defendant or its agents other than the said Tomlin, to the best of my knowledge and belief; that the note and deed of trust executed by said Kinney and wife to the defendant, in consum'ation of the contract in controversy, was also unauthorized by the defendant and its agents other than said Tomlin, and has never been ratified or confirmed by defendant, and the defendant claims nothing under the same, but claims under the original notes and deeds of trust due and owing from said Kinney to it; that the owners of defendant bank, who have a controlling interest therein, had it in contemplation to wind up the defendant bank and its business for sometime before the 30th day of June, 1879, the date of the contract in controversy, which determination to wind up or dispose of the defendant bank and its business was known to said Tomlin before the consum'ation of said contract and transaction in controversy; said Kinney was in possession of said lands in controversy and residing thereon at the time he procured the loan before referred to from the complainants; and further deponent saith not.

343 The defendants will read in evidence the various deeds of trust executed by Kinney and wife and held by the Daviess County Savings Association, which are mentioned in complainants' bill, and the notes of said Kinney secured thereby.

Defendants will read in evidence transcripts of the judgments mentioned in complainants' bill.

McFERRAN & HOLLIDAY AND
L. H. WATERS,
Defendants' Attorneys.

KANSAS CITY, *October* 12, 1881.

344 *Notice to take depositions.*

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,
against
ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri; William W. Clevenger, sheriff, Caldwell Co., Mo.; and the Daviess County Savings Association, defendants.

In the circuit court of Caldwell County, of State of Missouri.

To the above-named plaintiff:

You are hereby notified that depositions of witnesses, to be read in evidence in the above-entitled cause on the part of the defendants, will be taken at the law office of J. A. Holliday, in the city of Gallatin, in the county of Daviess and State of Missouri, on the 26th day of February, A. D. 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

J. A. HOLLIDAY,
Attorney for Defendant.

Service of the above notice is hereby acknowledged, and issue of dedimus and all exceptions as to time waived.

Gallatin, Mo., this February 17th, 1881.

STUART BROS. &
GILLIHAN & BROSIUS,
Att'ys for Plaintiffs.

In the circuit court of Caldwell County, Missouri.

A. S. WEBB ET AL.
vs.
A. L. MARTIN ET AL.

345 It is hereby agreed by and between the parties to this action that no objection shall be made by either party to the depositions taken herein as to the certificates of the officers, the time of day in which they were taken, or any other objection except such objections as are recorded in the deposition, and also such parts of said deposition as may be objected to as incompetent or irrelevant or immaterial

This 26th day of Feb'y, 1881.

GILLIHAN & BROSIUS &
STUART BROS.,
Att'ys for Plaintiff.
JAMES H. B. McFERRAN AND
J. A. HOLLIDAY,
Attorneys for Defendants.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,
against
ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, and William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association of Gallatin, Mo., defendants.

In the circuit court of Caldwell County, Missouri.

The parties, by their attorneys, in the above-entitled cause, stipulate, in order to avoid encumbering the record in said cause with mere formal matter, and in order to avoid unnecessary cost and expense, that either party, in taking depositions in said cause, or any case involving the use of trust-deeds as evidence in which said parties plaintiffs or defendants, or any of them, are parties, that it shall be sufficient to identify any such trust-deeds or the original notes secured thereby and make them evidence in relation to the lands in controversy by giving the names of the parties to such deed of trust, description of the land described therein, date
346 of acknowledgement, date of filing for record, the endorsements upon such deed of trust, the amount and date of such note, and the entries or endorsements on such note, in the body of such deposition, without annexing the original deeds of trust or notes, or copies thereof, as exhibits to such deposition, saving to the parties objections to the competency and relevancy of such testimony on the trial as if the original deeds of trust or notes, or copies thereof, with endorsements thereon, were attached to said depositions as exhibits or offered in evidence.

Provided depositions so taken shall not preclude either party from offering or introducing such original deeds of trust or notes, or certified copies thereof, with endorsements thereon or on the margin of the record thereof, such deeds of trust in evidence, subject to the objections of the opposite party. And in case either party desires to prove by the deposition of any witness any fact explaining any entry in the bank-books of the defendant The Daviess County Savings Association, it shall be sufficient to copy such entry in the body of the deposition, and the production of the said bank-book in court at the trial to verify such entry is hereby waived. And in case either party desires to prove by the deposition of any witness the entry on the margin of the record of any deed of trust other than the deeds of trust on the land in controversy, it shall be sufficient to copy such entry in the body of such deposition and identify by the testimony of the witness the interest, if any, of said parties in said deed of trust the entry on the margin of the record of which is offered in evidence, and the filing of certified copies of such deed of trust with the deposition is hereby waived, saving to the parties the objections to the competency or relevancy of such testimony.
347 And it is further agreed that this stipulation and any depositions taken by either party shall be filed as a paper in this case by either party, or any party in any case in which any of said parties are parties and in which said depositions may be filed by law or verified by leave of the court, all exceptions being waived to the depositions taken and certified and returned in accordance with the stipulation, saving only the ob-

jections to the competency or relevancy of the evidence in the case; and original deeds of trust and notes given by P. S. Kinney to bank may be produced on trial for inspection & evidence to cancellation & payment endorsed thereon.

Given under our hands this Feb'y 22d, 1881.

STUART BROS.,
FRANK SHEETZ, &
GILLIHAN & BROSIUS,
For Plaintiffs.
JAMES McFERRAN &
J. A. HOLLIDAY,
Att'ys for Def'ts.

It is further stipulated and agreed, in addition to the foregoing, that nothing therein contained shall preclude either party from objecting to the form of any question that may be asked by either party in taking the deposition referred to in the preceding stipulation, nor to the creditability nor competency of any witness whose deposition may be taken under the foregoing stipulations.

Feb'y 25th, 1881.

STUART BROS. ET AL.,
Att'ys for Plaintiffs.
JAS. McFERRAN &
J. A. HOLLIDAY,
Attorneys for Defendants.

EXHIBIT B.

GALLATIN, MO., *Jan'y 1st*, 1880.

348 At a regular meeting of the directors of the Daviess County Savings Association, held at the banking-house of the association on January 1st, 1880, the foregoing business was transacted, viz: It appearing to the board that the amount of earnings on hand at the close of the six months ending Dec. 31st, 1879, is the sum of $3,534.83, it was ordered that no dividend be declared on the capital stock of the association, but that five (5) per cent. interest on the deposits of the stockholders for said months be paid, and that the remainder of said earnings be carried on the books of the association, which was done as follows, to wit:

To James Hemry, on $32,700.00, 5 per cent	$1,635 00
" James McFerran, on $16,828.00, 5 per cent	$841 40
To John A. Tuggle, on $7,881.00, 5 per cent	$394 05
Leaving on hand a balance of	$664 38
	$3,534 83

Which balance is carried on the books of the association.

R. L. TOMLIN, *Sec'y.*

EXHIBIT C.

GALLATIN, MO., *August 7th*, 1879.

Discounts p'd:

P. S. Kinney (9 notes p'd)	$25,265 14
P. S. Kinney, p'd per Darrow	3,000 00

Discounts out:

P. S. Kinney	$36,680 30

We, Robert L. Tomlin and Frank E. Clingen, cash'r & assist. cash'r, on 7th Aug., 1879, of the Daviess County Savings Association, of Gallatin, Mo., state that the above are true entries of the books of said association on that date, and the same are all the entries in said books in any way connected with a certain transaction between P. S. Kinney and
349 R. L. Tomlin, cash'r of said association, & Lew E. Darrow entered into about that date. The last entry above of "discounts out, P. S. Kinney, $36,680.30," is really the amount of a new note taken from P. S. Kinney for his indebtedness to the bank after said transaction was closed, and in fact grew out of said transaction.

R. L. TOMLIN.
FRANK E. CLINGAN.

Depositions of witnesses produced, sworn, and examined on the 26th day of February, A. D. 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the law office of J. A. Holliday, in the city of Gallatin, in the county of Daviess and State of Missouri, before me, William T. Sullivan, a notary public within and for the county of Daviess and State of Missouri, in a certain cause now pending in the circuit court of Caldwell County, State of Missouri, between Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs, against Alphonzo L. Martin, sheriff of Daviess County, Missouri, William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association, of Gallatin, Missouri, defendants, on the part of the defendants.

ROBERT L. TOMLIN, of lawful age, being produced and sworn to testify the truth, the whole truth, and nothing but the truth, and examined on the part of the defendants, deposeth and saith:

My name is Robert L. Tomlin; aged, 43 years; and residence at Gallatin, Mo; I am not now engaged in business of any kind. I recognize the deed of trust handed me (here witness is handed a paper) as one purchased by me from Mary Barnum for the Daviess County Savings
350 Association. The names of parties to said deed of trust are as follows: P. S. Kenney and Elizabeth, his wife, parties of the first part, M. A. Low, party of the second part, and Leslie P. Barnum, party of the third part. The land described in said deed of trust is as follows: The southeast quarter of section No. (3) three, and the northwest quarter of the northeast quarter of section No. (10) ten, and the north half of the northwest quarter of section No. (10) ten, and the northeast quarter of the northeast quarter of section No. (9) nine, all in township No. (57) fifty-seven, of range No. (29) twenty-nine. The date of acknowledgement of

said deed of trust is the eighth day of February, A. D. 1872, before R. N. Doane, justice of the peace of Caldwell County, Missouri. The said trust-deed filed for record on the 10th day of February, 1872; John H. Williams, recorder. The amount of the note, signed by P. S. Kinney, secured by said trust-deed is three thousand dollars ($3,000.00). This trust-deed has stamp endorsement on back of it as follows:

"Daviess County Savings Association. Paid. Gallatin, Mo."

The date of said note is February 8th, 1872.

The following entries and endorsements are on the back of said note:

"Pay to Mary Barnum.

"L. P. BARNUM."

"Paid one hundred and fifty dollars interest Aug. 5th, 1872."

"Paid fifty dollars April 15th, 1873."

"P'd to E. D. Sackett, on this note, four hundred and fifty dollars of interest, June 15th, 1875."

351 "Paid March 3, '77, rec'd given dated March 1, '77, of R. L. T. Tomlin, cash, 1,000.00."

"Pay R. L. Tomlin, cashier, without recourse.

"MARY BARNUM."

The following endorsement is on the face of said note:

"This note is secured by a deed of trust, which is duly stamped."

The following stamp endorsement appears on both the face and back of said note:

"Daviess County Savings Association. Paid. Gallatin, Mo."

Also a deed of trust (here handed witness) I identify as a deed of trust bought by me for the Daviess County Savings Association, of Nicholas Quirk.

The parties to said deed of trust are as follows:

Patrick S. Kenney and Elizabeth, his wife, parties of the first part, John Doolin, party of the second part, and Nicholas Quirk, of Caldwell Co., Mo., party of the third part.

The land described in said deed of trust is as follows:

The southeast quarter of section No. (3) three, and the east half of the northeast quarter of section No. (10) ten, in township No. (57) fifty-seven, in range No. (29) twenty-nine, and containing (240) two hundred and forty acres of land, more or less, according to the United States surveys.

This deed of trust was acknowledged before A. W. Rice, notary public of Caldwell County, Mo., on the 20th day of December, A. D. 1873, and filed for record on the eighth day of January, at 1 p. m., 1874. Joseph Williams, recorder of Caldwell County, Mo.

The following stamp endorsement appears on said deed of trust:

352 "Daviess County Savings Association. Paid. Gallatin, Mo."

The amount and date of the note secured by said deed of trust is as follows: Amount, $1,650.00; date, Dec. 20th, 1873. And the note has the following stamp endorsement on the face:

"Daviess County Savings Association. Paid. Gallatin, Mo."

And the following written entries and endorsements on the back:

"Paid on this note by the Daviess County Savings Association of Gallatin, Mo., five hundred forty-six and $\frac{15}{100}$ dollars, Feb'y 3d, 1877, being interest on same up to Dec. 20th, 1876."

"For value rec'd, I assign the within note to the Daviess County Savings Association, without recourse.

"March 26th, 1877.

"N. QUIRK."

"Discounts, $1,822.35. See book May 30, '77; Jan'y 1, 1879."

(Here witness was shown a deed of trust.)

I identify this as a deed of trust purchased by me of Solomon Musser for the Daviess County Savings Association. This deed of trust has the following parties to it:

Patrick S. Kinney, party of the first part, Cyrus McLaughlin, of Caldwell County, party of the second part, and Solomon Musser, of same county, party of the third part. The land described in said deed of trust is as follows:

353 The east half of the northwest quarter and the west half of the northeast quarter, all in section No. (9) nine, and the south half of section No. (4) four, all in township No. (57) fifty-seven, in range No. (29) twenty-nine.

This trust-deed is acknowledged before Joseph Williams, clerk of the circuit court of Caldwell County, on the 17th day of November, A. D. 1873, and filed for record in said Caldwell County with Joseph Williams, recorder, on the 17th day of November, 1873.

This deed of trust has the following stamp endorsement on the back of it:

"Daviess County Savings Association. Paid. Gallatin, Mo."

The date of note secured by said deed of trust is November 17th, 1873, for the sum of two thousand one hundred and twelve and $\frac{52}{100}$ dollars (2,112.52).

The note has the following stamp endorsement on the face:

"Daviess County Savings Association. Paid. Gallatin, Mo."

And is endorsed on the back as follows:

"Discounts, Nov. 10th, '75, $2,520.35."

"I hereby assign the within note to the Daviess County Savings Association without recourse on me, with the benefit of deed of trust made to secure same.

"Oct. 22d, 1875.

"SOLOMON MUSSER."

(Here witness was shown another deed of trust and note.)

354 I identify this deed of trust and note given to R. L. Tomlin, as trustee for the Daviess County Savings Association. The following are the parties to said deed of trust:

Patrick S. Kinney and Elizabeth Kinney, his wife, parties of the first part.; Robert L. Tomlin, party of the second part; and the Daviess County Savings Association, of Daviess County, Mo., party of the third part.

The land described in said deed of trust is as follows:

The south half of section No. (3) three and the south half of section No. (4) four, all in township No. (57) fifty-seven, range No. (29) twenty-nine, containing in all six hundred and forty acres, be the same more or less.

This deed of trust was acknowledged before William C. Gillihan, notary

public of Daviess County, Mo., on the 29th day of August, 1874, and filed for record with Joseph Williams, recorder of Caldwell County, Mo., on the 3rd day of September, A. D. 1874, and has the following stamp endorsement on the back:

"Daviess County Savings Association. Paid. Gallatin, Mo."

And the note secured by said deed of trust is dated August 28th, 1874, and was given for the sum of five thousand and thirty-six and $\frac{80}{100}$ dollars, signed Patrick S. Kenney, and has the following stamp endorsement on the face thereof:

"Daviess County Savings Association. Paid. Gallatin, Mo."

355 And said note has the following entry or mem. on the back thereof:

"In't paid to Feb'y 28th, 1876, by Kenney, part in Naven note."

(Here another deed of trust was handed witness, who said:)

I identify this as a deed of trust given to Wm. C. Gillihan & Samuel T. Brosius, as trustees for the Daviess County Savings Association.

The parties to said deed of trust are:

Patrick S. Kenney and Elizabeth Kenney, his wife, parties of the first paat; William C. Gillihan & Samuel T. Brosius, parties of the second part; and the Daviess County Savings Association, party of the third part.

The land described in said deed of trust is as follows:

The south half of section No. (3) three; the south half of section No. (4) four; the north half of the northeast quarter and the southwest fourth of the northeast quarter and the east half of the northwest quarter of section No. (9) nine; the east half of the northeast quarter and the north half of the northwest quarter and the northwest quarter of the northeast quarter of section No. (10) ten, all in township No. fifty-seven (57), in range No. twenty-nine (29), containing in all one thousand and fifty-five and $\frac{27}{100}$ acres, be the same more or less; also the south half of the northwest quarter and the southwest quarter of the northeast quarter in section (10) ten, and the northwest quarter of the southeast quarter section (9) nine, all in township (57) fifty-seven, range (29) twenty-nine, 160 acres, more or less, and containing in all hereby conveyed $1,217\frac{07}{100}$ acres, be the same more or less.

356 Said deed of trust was acknowledged before A. W. Rice, notary public, Caldwell County, Mo., on the 6th day of April, 1876, and filed for record on the 13th day of April, A. D. 1876, at 3.30 p. m., with Joseph Williams, recorder of Caldwell County, Mo., and has the following stamp endorsement on the back thereof:

"Daviess County Savings Association. Paid. Gallatin, Mo."

This deed of trust was given to secure the following described two promissory notes of even date with said deed of trust:

Two thousand four hundred and forty-four dollars and eighty-three cents, on or before September 1st, 1876, with ten per cent. interest from maturity, and two thousand four hundred and forty-four dollars and eighty-three cents, on or before January 1st, 1877, with ten per cent. interest from maturity, both of said notes payable at the banking-house of the Daviess County Savings Association."

Witness said this note is one of the notes referred to in the deed of trust. This note is dated April 1st, 1876, given for the sum of $2,444.83, signed P. S. Kenney, and has the following stamp endorsement on the face thereof:

"Daviess County Savings Association. Paid. Gallatin, Mo."

And has the following entry or endorsement on the back thereof:

357 "Secured by deed of trust on record in the recorder's office of Caldwell County, Mo. Wm. C. Gillihan and Samuel T. Brosius, of Gallatin, Mo., are the trustees; also (witness continued) there was another note of the same date and same amount given by P. S. Kenney at the same time, which is lost or mislaid; I do not know what has become of it. I know that it had the stamp endorsement on the face of it which this note bears, referring to the following stamp endorsement:

"Daviess County Savings Association. Paid. Gallatin, Mo."

I do not know whether there were any endorsements on the back of the last note.

(Here witness was shown another deed of trust.)

I identify this deed of trust as one given to me as trustee of the Daviess County Savings Association. The parties to such deed of trust are Patrick S. Kenney, party of the first part; Robert L. Tomlin, party of the second part; and the Daviess County Savings Association, party of the third part. The real estate described in said deed is as follows:

S. half sec. 4, t'w'p 57, R. 29; E. half sec. 9, t'w'p 57, R. 29; E. half NW. quarter sec. 9, t'p 57, R. 29; N. half sec. 10, t'p 57, R. 29; NE. quarter NW. quarter sec. 10, t'p 57, R. 29; containing in all 1,080 acres, be the same more or less.

Such deed of trust was acknowledged before W. C. Gillihan, notary public, Daviess Co., Mo., on the 24th day of May, 1875, and filed for record with Joseph Williams, recorder of Caldwell County, Mo., on

358 the 29th day of May, A. D. 1875, at 10 o'clock and 40 minutes a. m., and has on the back the following stamp endorsement:

"Daviess County Savings Association. Paid. Gallatin, Mo."

This deed was given to secure a note dated (note here shown) May 24th, 1875, given for $8,013.13, signed P. S. Kenney, and has the following stamp endorsement on the face thereof:

"Daviess County Savings Association. Paid. Gallatin, Mo."

By agreement of parties adjourned till 1 o'clock p. m., to meet in same office.

1 O'CLOCK P. M.

Parties met in same office, pursuant to adjournment, and the further taking of depositions continued before same officer.

Testimony of R. L. Tomlin continued:

Question. Please explain the entry or endorsement on the note of P. S. Kenney to Leslie P. Barnum, referred to by you, with reference to the entry of March 3, '77.

Answer. That is not a credit on the note, but the $1,000.00 there entered in Mr. House's handwriting is a part of the purchase-price paid by the Daviess County Savings Associaiion to Mrs. Mary Barnum. As between the bank and P. S. Kenney, Mr. Kenney is not entitled to any such credit.

Question. Now, as to the note of P. S. Kenney to Nicholas Quirk, please explain the entry or indorsement as to the $546.15 there entered.

359 Answer. That is a part of the purchase-price paid by the Daviess

County Savings Association to Nicholas Quirk for the notes. As between P. S. Kenney and the Daviess County Savings Association Mr. Kenney is not entitled to any such credit, and the full amount of the note and interest is due from Kenney to the bank. Kenney was not entitled to any credit on that note.

Question. All the foregoing described deeds of trust and notes are cancelled by the bank's stamp as "paid" in the following stamp endorsement, viz:

"Daviess County Savings Association. Paid. Gallatin, Mo."

State, if you know, who cancelled them with that stamp and when it was done.

Answer. It was done in August, 1879, either by myself or by Frank Clingen, by my directions.

State whether said notes and deeds of trust, or either of them, were actually paid at the time the cancellation by the stamp referred to was placed thereon.

Answer. They were not paid in money.

Question. State how they came to be cancelled.

Answer. I had added the amounts of those notes together and taken from P. S. Kenney a note for the sum of those notes.

Question. State what agreement there was between you and Kenney, or others, in relation to that.

Answer. I had agreed with Mr. Kenney to take from him a new note in lieu of those mentioned; I agreed also with him that I would
360 satisfy the records of the deeds of trust taken to secure those notes, and to take a new deed of trust to secure the new note taken, aggregating the value of the old notes.

Question. In what capacity did you do this?

Answer. I did this as cashier of the Daviess County Savings Association. There was also an agreement with Lew E. Darrow. I agreed with Mr. Darrow that after I had satisfied the then recorded deeds of trust on P. S. Kenney's land, held by the Daviess County Savings Association, I would allow him to file a deed of trust on P. S. Kenney's land, the same land on which the bank had held deeds of trust, before filing the new deed of trust or any other deed of trust on the said lands of Kenney for the benefit of the Daviess County Savings Association. The deed of trust to Darrow was to secure the sum of $10,000.00, and was executed by P. S. Kenney and wife. Darrow loaned Kenney $10,000.00, and I entered satisfaction on the margins of the records of Caldwell County, Missouri, at Kingston, and permitted Mr. Darrow to file a prior lien on the lands of Kenney. I entered satisfaction on such records of the bank's deeds of trust by signing my name as cashier of the bank. I do not remember the precise form I used in entering satisfaction. I received $3,000.00 from Kenney on his indebtedness to the bank at the time of this transaction and credited it on Kenney's new note which I had taken. The new note to the Daviess County Savings Association and the new deed of trust executed by P. S. Kenney and wife to secure such note were executed and delivered to me before Kenney paid me the three thousand dollars referred to. At the time I entered satisfaction on the margin of the
361 records on the bank's deeds of trust Mr. Kenney and Mr. Darrow was there present at Kingston with me. The contract was that

Darrow was to loan Kenney ten thousand dollars, out of which money Darrow was to pay off for Kenney the Power deed of trust for $5,000.00 and some interest, and the judgment against P. S. Kenney held by the bank at Breckenridge, Mo., and a judgment held against P. S. Kenney by the estate of Thomas Ryan, deceased, and the remainder of the ten-thousand-dollar loan the Daviess County Savings Association was to receive at the hands of Lew E. Darrow for P. S. Kenney. That amount was $3,000.00, which I credited on the new note against P. S. Kenney. Mr. Darrow afterwards sent me a draft for a small amount, which I credited on an indebtedness against P. S. Kenney which was not secured by deed of trust. I do not remember the amount of that draft; it was a small sum. I agreed, in order to bring about this state of things, to enter satisfaction on the bank's deeds of trust against Kenney before referred to in my examination. This was all the bank received in consideration of releasing the bank's deeds of trust, and this was the reason for releasing them. The bank received no other or further consideration than that I have mentioned. The deeds of trust and notes were cancelled with the stamp endorsement of the bank before referred to, as a part of this transaction, and the entry of satisfaction made by me on the margin of the records of Caldwell County, Mo., was also made as a part of this transaction.

Question. State whether or not you had a power of attorney from the Daviess County Savings Association or its board of directors to enter satisfaction on the margin of the records of Caldwell County, Mo., of the deeds of trust before referred to by you in this deposition.

362 Answer. I had not. I never had a power of attorney from the Daviess County Savings Association nor its directors to enter satisfaction of any record, either in Caldwell County or elsewhere, or for any other purpose.

Question. State whether this agreement between Darrow, Kenney, and yourself was made by you alone, as far as the bank was concerned.

Answer. It was; none of the directors knew anything about it except myself.

Question. Who were the directors then?

Answer. James Hemry, John A. Tuggle, James McFerran, and myself were the directors at the time this agreement was made, those directors having been elected about January 1st, 1879. I never consulted any of the directors with reference to making this contract, and they knew nothing about it until long afterwards. The first time the matter was canvassed between the directors, as far as I know, was when Col. McFerran was here in Feb., 1880. Mr. Hemry and Mr. Tuggle both live in this county and were in town frequently and I saw them frequently, but never broached the subject to them or either of them. I kept up a regular correspondence with Col. McFerran in Colorado twice a month or oftener, and made statements of the condition of the bank every fifteen (15) days—I mean statements of the resources and liabilities—in words and figures in the usual form made by banks, and transmitted them by mail to Col. McFerran.

Question. State what your duty was with reference to reporting the business of the bank and its condition to Col. McFerran, if there were such duty imposed.

(Objected to by the plaintiffs as incompetent.)

Answer. My standing instructions from Col. McFerran were to render to him semi-monthly statements of the condition of the bank. I had frequent requests to keep him posted. He would wind up his let-
363 ters with this remark: "Keep me posted." All the requests referred to were in writing.

(Plaintiffs object to that portion of the answer of witness that repeats letters and gives contents of same.)

Witness continued: When Col. McFerran was here he urged me verbally—he urged me at different times, generally every time he was here—to inform him as to the business of the bank and how I was getting along, as well after he went to Colorado as before. I did not notify Col. McFerran that these entries of satisfaction were made, nor did I tell him that they were intended to be made until he asked me about them in February, 1880, nor did I inform him anything of the agreement between Darrow, Kenney, and myself before referred to until he came here in February, 1880, with reference to the loan of Darrow to Kenney, and the satisfaction of the records in Caldwell County before referred to, and I did not inform him then until he asked me about it.

Question. What did you tell Darrow as to your authority to make this agreement or to satisfy the records?

Answer. The question was never raised as to my authority and we had no conversation on the subject. I never told him that I had any authority from the directors or any one else to enter the satisfaction of record referred to or to make the agreement. I simply told him I would do so, and he accepted my statement and the matter was arranged as I have said. The directors notified me, or Col. McFerran did, speaking for them, and Mr. Henry also, in February, 1880, that the directors of the bank would not approve of my acts with reference to my satisfying the records and the Darrow loan to Kenney, and that my action in that respect stood disapproved by them. I understood that the directors had just obtained
364 information of the matter a short time previous. In the spring of 1880 the directors ordered the lands of P. S. Kenney to be sold under the deeds of trust which I had satisfied on the records, or had undertaken to satisfy. There was no necessity for the bank to raise money by the transaction by means of the loan to Kenney by Darrow and by releasing the bank deeds of trust as before stated.

Question. State what authority, if any, you ever had from the Daviess County Savings Association or its directors to cancel deeds of trust, make contracts in relation to their satisfaction or to change them, or to make contracts for the bank or enter its securities satisfied on the records.

Answer. I had no authority except the authority that legally pertains to the office of cashier.

Question. At whose request did Kenney make the application to Geo. W. Frank & Darrow for the loan of ten thousand dollars?

Answer. I requested Mr. Kenney to procure a loan from somebody and get the Powers deed of trust and the two judgments off the records.

I call your attention to note of P. S. Kenney to the Daviess County Savings Association for $1,029.18, dated Dec. 26th, 1876.

Answer. I do not know whether that note was secured by deed of trust or not. If it was it was cancelled with the stamp endorsement on the face, and the records of Caldwell County, Mo., were satisfied by me at the same

time as the other deeds of trust. The notes of P. S. Kenney to the Daviess County Savings Association for $36,680.30, in addition to the last-described note for $1,029.18, included some other indebtedness of P. S. Kenney to the bank besides those notes secured by deeds of trust referred to. This $36,680.30 was secured by deed of trust on Kenney's lands, subject and inferior to plaintiffs' deed of trust in said transaction.

365

The entries on the books of the Daviess County Savings Association, with the certificates of myself and Frank E. Clingan, is hereto attached and made a part of my deposition, attached and marked "Exhibit C."

The Daviess County Savings Association, sometimes called the bank in my deposition, is situated at Gallatin, Daviess County, Mo.

Cross-examined by T. B. STEWART, Esq., attorney for plaintiffs:

I was acting cashier from June 10th, 1870, to January 1st, 1872, at which time I was elected cashier, and served as such until January 1st, 1881. I was a director of the bank most of the time from the time I was elected cashier all or nearly all the time until I went out in 1881. I was a director in 1879. I am a licensed attorney of this State; was admitted to the bar in 1859, but never attempted to practice law in the courts. From 1873 up to January 1st, 1879, the president of the Daviess County Savings Association, Col. McFerran, lived in Colorado. Prior to 1873 I was daily in the bank as cashier, and performed all the routine business between the bank and its customers.

Question. After Col. McFerran went to Colorado who had charge of the bank, transacted the business, made its contracts, and generally had charge of all matters between the bank and its patrons?

Answer. I conducted the business of the bank, had charge of all business between the bank and its patrons, and managed all such business as making contracts, except in cases where controversies arose between me as cashier and customers of the bank. It was my custom to submit controversies as they arose to Col. McFerran, advise him of them, and get directions from him as to the course I should take. There were branches of the bank's business that I did not manage. I never sold a piece of ground owned by the bank and deeded it away, and was not in the habit of closing deeds of trust, such as collecting debts by foreclosure of mortgages, or selling lands under deeds of trust, by which the bank might get real estate on its hands, without first advising Col. McFerran or other directors of the bank of my intended action, and asking their opinion as to such a course; also I never located correspondents, or decided in what banks in Eastern cities funds should be deposited to draw against.

366

Question. After Col. McFerran left here didn't you make contracts for sale of real estate, and send the deeds to him to be signed?

Answer. I made such contracts subject to his ratification, and in sending deeds to him recommended their execution by him, I also advising the party that unless Col. McFerran approved it it was no contract, as I advised them that I had no power to make them a title.

Question. During this time, from 1873 to 1880, when a man applied to the bank for a loan, giving trust-deed, or made payment on trust-deed, and wanted part of lands released, or to borrow an additional sum of

money, or change the form of his indebtedness, you attended to that business, didn't you?

(Objected to by defendants' counsel because its leading his own witness as to the subject-matters of the question is suggestive of the answer; is informal, multifarious, and combines several questions in one; as to the management of the bank the plaintiffs have made the witness their own.)

Answer. When such business was done I attended to it.

Question. How many directors were there in 1879?

367 Answer. Not less than three; perhaps five. I don't remember.

Question. Now, is it not true that the records of the bank shows that there would be several years together, say as many as four, when there would be no directors elected at all, and no meeting of directors?

(Objected to by the defendants' counsel as leading and suggesting the answer, and not the best evidence, and not indicating what years, and not asking the witness for his knowledge, but asking what a record purports to show, the record itself being the best evidence.)

Answer. There is no record of any meeting of directors from December 12th, 1865, to December 18th, 1869, and there is no record of an election of directors between those dates. The record shows there was a meeting of directors Dec. 12th, 1865, and also a meeting of directors Dec. 18th, 1869.

Question. Now, Mr. Tomlin, I will call your attention to the transaction in controversy. At the time the loan was applied for in this case please state the order of the liens of these trust-deeds as regards to time, and what liens were prior to those held by the bank.

(Objected to by the defendants' counsel as not the best evidence.)

Answer. All I can do is to give my impression. My impression is the bank held some liens on a portion of Kenney's lands which was prior to all other liens, but that the deed of trust owned by James D. Power, and the judgment owned by the Breckenridge Bank, and the judgment owned by the estate of Thos. Ryan were liens prior to a portion of the deeds of trust held by the bank.

Question. Some of the bank's deeds of trust were signed by P. S. Kenney alone, were they not; and you knew this at the time of this transaction?

368 Answer. They were so signed, and I knew such fact.

Question. You have heretofore stated that you insisted on Kenney making application for a loan; please give your reasons for so doing.

(Objected to by defendants' counsel, because it assumes that——

Question waived.)

Question. Did you or not insist on Patrick Kenney making application to Frank & Darrow for a loan? And, if so, give your reasons for so doing.

Answer. I requested Mr. Kenney to obtain a loan in order that he might pay off the liens on his lands, which I thought prior to part of the liens held by the bank, as such liens, which I wished paid off were past due, and I feared the holders of the same might attempt to collect their money by a sale of Mr. Kenney's lands, and for the further reason that the deed of trust owned by James D. Power was liable to be foreclosed by publishing notice of sale in a paper published in Buchanan County, Missouri, and I feared such course might be taken, and knowledge of the same might not reach me. I wished also to obtain the signature of the wife of P. S. Kenney to the bank's trust-deed, which would cover all of Mr. Kenney's lands.

Question. You say you requested him to obtain this loan to pay off liens which you thought prior to liens of the bank. Now please designate to what liens you refer.

Answer. I refer to the deed of trust held by James D. Power, the judgment held by the Breckenridge Bank, and the judgment held by the estate of Thomas Ryan.

Question. Now, Mr. Tomlin, please state if you did not apply to Frank & Darrow for the loan for Mr. Kenney, and carry on the correspondence with them in reference to the same.

369 Answer. I think I corresponded with Frank & Darrow with a view of bringing about a loan to Mr. Kenney by them.

Question. Why did you not make the loan to Kenney yourself for the bank, and is it not true that it was because the bank did not have sufficient funds to do it and at the same time carry on its ordinary business?

(Objected to by defendants' counsel as leading and suggestive, and soliciting incompetent and irrelevant evidence.)

Answer. There were two reasons why I did not take such a course. One was I did not wish to advance any more money on P. S. Kenney's lands unless compelled to do so. The other was I thought Kenney would exert himself more to be prompt in the payment of interest to strangers than he would to pay interest to the bank, when he was well acquainted, and on whose good will and support I thought he was disposed to rely too much already. It is not true that I could not have raised the money to pay off the liens if I had regarded that course as necessary.

Question. I do not ask you, Mr. Tomlin, as to whether the bank might not possibly have advanced the $7,000.00 or thereabouts to pay off these prior liens, but I simply inquired whether you considered it right, in reference to the general business of the bank, that it should do so.

(Objected to by defendants' counsel because it has been substantially answered, is leading, and asking the witness's opinion or judgment.)

Answer. I considered it best, and therefore right, that the bank should not do so at the time.

Question. In your correspondence with Frank & Darrow, and the arrangements you made with them, was about simply this, was it not:

370 1st, that the Daviess County Bank should release and cancel its deeds of trust on Kenney's lands, allowing the loan to be made to him by Frank & Darrow to come in and be prior as a lien to any claim of the bank, and in consideration of this they were to make the loan of $10,000.00, were to pay off the Power deed of trust and the two judgments, and the rest of the money was to be paid over to you to apply on Kenney's indebtedness to this bank?

(Objected to by defendants' counsel as leading and suggestive, indicating the answer of the witness and putting the words of the counsel as the answer of the witness sought.)

Answer. I think the arrangements between Frank & Darrow and myself were substantially as indicated by the question.

Question. Well, after this arrangement was made Mr. Darrow came to this place with the money, and you went with him to Kingston, did you not, to carry out the arrangement?

Answer. That is my recollection.

Question. Now state if the money was applied under your directions; and, if so, how applied.

Answer. The money was applied according to the understanding between Mr. Darrow and myself, heretofore alluded to. The $3,000.00 that I received for the bank did not go through Kinney's hands at all. Mr. Darrow paid it direct to me, and I applied it on Kinney's indebtedness, as before stated.

Question. At that time you took the note from Kenney for $36,680.30 and the new deed of trust to secure it, did you not?

Answer. I did, and filed it for record in Caldwell County, Mo., within a few minutes after Mr. Darrow filed the trust-deed to plaintiffs.

Question. What was the arrangement between you and Kenney
371 with reference to the old notes?

Answer. Not having the old notes with me at Kingston I told Mr. Kenney that I would come to Gallatin and cancel the old notes and send them to him, he desiring that they be not destroyed, as he wished to keep them. When I came home I cancelled the old notes and the deeds of trust pertaining to them by stamping upon them "paid," as appears on the same, and then placed the notes and said deeds in an envelope and marked the same with P. S. Kenney's address, intending to mail them to him, but on reflection I concluded to let the package remain in the bank until I saw Mr. Kenney and deliver it to him, as the package was bulky and would take considerable postage, and as the matter was not urging, as he could have no use for them except to preserve them for reference.

Question. What was done with the three thousand dollars, and what entry was made on the bank's books?

Answer. I credited the new note of Kenney for $36,680.30 with the $3,000.00 as a credit or partial payment of said note, and entered the $3,000.00 on the books as a partial payment of the said note. The old notes were marked on the books as paid, and the new note was entered on the books as the one which Kenney was to pay, belonging to the bank. The $3,000.00 went into the general fund of the bank, and was used by the bank in its business. The sum was paid in drafts, and I forwarded the drafts to our correspondent in New York, and the amount was then placed to the bank's credit.

Question. Have the directors or any of the officers of the bank ever ordered the entries on the books changed, or have you ever changed them?

Answer. They were never ordered to be changed, and have never been changed.

372 Question. Has the $3,000.00 that went into the general funds of the bank ever been taken out or ordered to be taken out by the directors or officers of the bank?

Answer. It has never been ordered taken out and has never been taken out.

Question. Has that $3,000.00 ever been tendered back or any steps been taken by the bank or its officers to rescind the contract.

(Objected to by defendants' counsel because it assumes a fact that does not exist, that is to say, the contract made by Tomlin with plaintiffs' agents was the contract of the bank and not the contract of Tomlin.)

Answer. The $3,000.00 has never been tendered back, to my knowledge, and no steps taken to rescind the contract, except that the directors informed me that they ignored it and repudiated it, or disapproved of it. The further sum that I have spoken of, as received from Mr. Darrow, was

applied by me on other notes of Kenney that was not secured by deeds of trust or otherwise.

Question. I will now ask you if prior to this loan you did not at one time have a chattel mortgage on stock which was given by Kenney to the bank to secure the sum of seven thousand dollars, and if you did not give up said mortgage without payment, deeming it for the best interest of the bank, and take other and different security?

(Objected to by defendants' counsel as leading and suggestive.)

Answer. The bank at one time did hold a chattel mortgage for about the sum of $7,000.00 on cattle remaining in Kenney's possession, which property Mr. Kenney sold in Chicago market but failed to pay any of the proceeds of said sale to the bank, thus destroying all security on the
373 said debt. After Mr. Kenney's said action I obtained from him another note secured by deed of trust on land, and gave up to him the note secured by chattel mortgage and the chattel mortgage, deeming it for the best interest of the bank.

Question. You are made to say in your deposition that you did not inform certain so-called stockholders or directors of the bank as to what you had done with reference to the loan by Darrow; I will ask you if you did not make the entries on the books immediately after the happening of the transaction, and whether the said books were not open to the inspection of the directors had they seen fit to examine them; and whether you ever tried in the least to conceal your action from the directors of the bank?

Answer. The entries were made on the books at the date they purport to be made just after the transaction, and the books have been accessible to all the directors at all times. There was no controversy at the time between Kenney and myself, or Kenney and the bank about his indebtedness or his willingness to pay it, and the amount of his indebtedness to the bank not being increased by this transaction, and the stockholders already knowing that Kenney's indebtedness to the bank was large, I did not see any necessity or reason for rehearsing the transaction to the stockholders, or directors, or any of them, and therefore did not do so. I did not either try to conceal or parade the transaction; did not enjoin secrecy upon Mr. Clingan, and Messrs. Gillihan & Brosius were aware of all the steps taken in the transaction, as I consulted them and took their advice—partly in a business sense and partly in a professional way, and they were relatives of a part of the stockholders.

374 Question. Now, in entering into this transaction with Frank & Darrow, you were not trying to take the advantage of any one, were you, but really thought you had the right, power, and authority to do what you did in connection with that transaction?

Answer. I was not trying to take the advantage of any one, but was seeking to get Kenney's indebtedness to the bank in a better shape than it had been and to secure for Kenney further time on indebtedness of his to other parties, and it never occurred to me that I was or might be acting beyond the scope of my legal powers as a cashier, in anything I did pertaining to the matter about which I am now testifying. I don't remember that the question of authority in me to do it ever occurred to my mind. In thinking of the matter I thought of it in other aspects than that of authority in me. I believed that in what I was doing I was doing right by all parties concerned.

Question. You are made to say in your deposition that you never told Col. McFerran about this until he asked you; now, don't you know that prior to his returning from Colorado he knew about this transaction, and had been corresponding with Mr. Holliday about it, and was intimate with everything that had been done?

Answer. I did not hear of his having corresponded with Mr. Holliday until in February, 1880, when he came to Gallatin. Mr. Holliday came to Gallatin with him when he came, Mr. Holliday being a resident of Caldwell County at that time. At the time of his visit here in February, 1880, he requested me to explain the transaction in all its details, which I did, and he exhibited at that time some knowledge of the transaction, and I think he told me, but I am not absolutely certain, that he
375 had been investigating the matter by means of correspondence with Mr. Holliday.

Question. What was done with these old notes and deeds of trust? When were they taken from the bank and where have they been?

Answer. In February, 1880, I exhibited them to Col. McFerran while explaining to him the details of the transaction, they having remained in my possession, in the original package that I put them in, from the time of the Darrow loan up to that time. At that time Col. McFerran took possession of the said notes and deeds of trust, saying they were the property of the bank, and haven't been in my possession or keeping since that time.

Question. Where was this so-called property of the bank taken to by him? Was it taken to Colorado?

Answer. I don't know.

Question. What was the paid-up capital stock of the Daviess County Savings Association at the date this loan was made with Darrow, what was the size of the shares of stock, if any, and who owned them?

Answer. In round numbers the paid-up capital stock was $9,700. The shares were $100 dollars each. Fifty shares were owned by Col. McFerran; thirty-three shares, I think, by James Hemry; six shares by John A. Tuggle; two shares by Henry C. McDougal; two shares by the heirs of Edward H. Smith; two shares by Frank Clingan, and two shares by myself.

Question. I will now ask you if since the consummation of the Darrow loan, Kenney has not given up all the land set forth in the last deed of trust to the bank to the Daviess County Savings Association and the said association has not leased the same back to Kenney?

Answer. I understand such to be the case.

Question. How do you know that such is the case?

376 Answer. Mr. Kenney told, and I think Mr. Hemry told me also. I don't believe I ever sa' the lease. I don't know whether the lease has been placed on record.

Question. Do you know whether the bank is withholding the lease from record until after the termination of this case?

Answer. I never heard of anything of that kind that I recollect of.

Question. What do you know of the bank's officers enjoining secrecy or advising secrecy about the foreclosure of these deeds of trust when they attempted to foreclose them, and why was it that they did not inform Frank & Darrow that they were going back on the contract that had been made and why did you not write them to that effect?

Answer. I don't know what the bank officers did with reference to secrecy in the cases where parties other than myself were the trustees in the deeds of trust; and I may be wrong, but I think that in the deed in which I was trustee, Mr. Holliday sent me a paper requesting me to sign it, which was a refusal or declination to act as trustee. Nothing was said about my preserving secrecy about that fact, to my recollection. I think in conversation with Mr. Hemry he suggested to me that the directors objected to me interfering or dealing with the Frank & Darrow loan matter in any way, and I followed their wishes as I understood it to be indicated by him.

Question. Now, was not Mr. Hemry's instructions or statement to you to the effect that you should not say or write anything to Frank & Darrow, and do you not know that it was the wish of Hemry that no publicity should be made of the fact to Frank & Darrow that the bank was going to foreclose those old deeds of trust, and did you not give Gillihan
377 & Brosius to understand that the bank would prefer that they should say nothing?

(Objected to by defendants' counsel as frivolous, leading, suggestive, and eliciting no fact in the cause.)

Answer. I think Mr. Hemry's statement was that the advertisement would appear in the newspapers as the law required, and would likely raise talk enough without anybody connected with the bank talking about it, as the more we talked the more we would have to talk about it. I think Mr. Hemry did object to me writing to Frank & Darrow or to anybody else about it, for the reason as I understood that I had made a blunder, and therefore the whole matter was taken out of my hands to be dealt with by other parties. As to Gillihan & Brosius, they were the trustees in one of the trust-deeds, and Mr. Hemry sent me to them to carry out the provisions of the trust-deed in which they trustees or to refuse, in writing, to act, whichever they might prefer, and in case they decided to act to simply make the advertisement as required and say nothing further about it. Mr. Hemry was president of the Daviess County Savings Association at that time.

Question. Up to the time that Col. McFerran returned from Colorado, Feb., 1880, state whether or not any of the directors that were here ever questioned your authority to act, or whether it was at that February meeting that the first question of your authority was raised?

Answer. No, sir; that was the first time the question was raised in reference to this matter.

Question. Now, Mr. Tomlin, it appears that you went out of the bank as its cashier, in 1881. I will ask you whether the officers of the bank claimed to discharge you for cause, and will further ask you if you do not know that their reason was, as stated by them and some of the
378 stockholders, that it would not look well to retain you as cashier and at the same time be carrying out this suit?

(Objected to by the defendants' counsel as frivolous, leading, suggestive, and not seeking to prove any fact relating to any issue in this cause.)

Answer. I was not present in the meeting of stockholders when officers of the bank were elected January 1st, 1881, and was not elected cashier. I was told afterward by two of the directors that however much they might have wished to retain me, they were unable consistently to do so,

as, having repudiated my acts as an officer, they had no course left them but to refuse to re-elect me, or words to that effect. That it would prejudice them in the progress of this suit to retain me after having repudiated my acts in the case in controversy, and further stated that the necessity for me being retired as an officer of the bank had only recently occurred to them, or come to their knowledge.

Question. Now, Mr. Tomlin, I hand you a copy of a letter written by you to Geo. W. Frank & Darrow, and ask you to attach it to your deposition and make it Exhibit D, and further ask you if you wrote such a letter?

(Objected to by defendants' counsel as leading and suggestive, and because purporting to be a copy and because the same facts are already in evidence.)

Answer. I kept no copy of any letter, and therefore don't know whether the paper handed me is a copy of my letter or not. It may be, and I expect likely it is. I have no objection to its being attached as an exhibit, provided my interpretation of the paper or any portion be permitted.

Question. This letter is dated Gallatin, Mo., July 28th, 1879. I
379 shall not concede your right to interpret any portion of the letter, and it must speak for itself, and again I ask will you attach and make it Exhibit D hereof; please answer yes or no?

Answer. No, sir; I believe not.

Re-examined by defendants' counsel:

Question. I will get you to state whether the record of the meeting of directors in 1869 shows that any persons were directors in 1869, were directors then, who were not directors in 1865.

Answer. Dr. Given's name appears as a director at the meeting in December 17th, 1869, and his name does not appear as a director in the meeting in 1865.

Question. You spoke, in your cross-examination, of making application to Frank & Darrow for a loan to Kinney; please state whether you had any authority from the directors of the bank or its officers to make application to Frank & Darrow for a loan, or to negotiate any loan with them on account of the bank, directly or indirectly.

(Plaintiffs' counsel objects to the question asked as incompetent, the issue in this case being as to the authority of the witness, and that being the question, the court must decide, and for the reason that the question calls for a conclusion of both facts and law, also as immaterial.)

Answer. No, sir; I had no talk with them on the subject before the loan was made. I mean by them, the bank officers and directors.

Question. You spoke of cancelling a chattel mortgage, in your cross-examination, for $7,000, executed by Kenney to the bank, and taking a deed of trust on land in lieu of it, because Kenney had sold the cattle and pocketed the proceeds; please state whether you had any authority from
380 the directors or officers of the bank to make this transaction, and did you bring it to the knowledge of the bank until after you had consum'ated the transaction?

Answer. I had no conversation with any director or officer of the bank in regard to that transaction until after it was done, and they had no

knowledge of the transaction and had given no authority so far as they were concerned.

Question. You say in your cross-examination that one of your reasons for going into the transaction with the plaintiffs' agents and Kenney in relation to the $10,000, and attempting to release the deeds of trust, was because the transaction would not increase Kenney's indebtedness to the bank; state whether or not the charge upon the lands was not increased $1,000 or more, by a deed of trust made by P. S. Kenney and wife to David W. McNair, trustee for George W. Frank & Darrow, in that transaction, the same lands upon which the Daviess County Savings Association held its liens.

(Objected to by plaintiffs' counsel as incompetent and not re-examination.)

Answer. The charge upon the lands was increased $1,000 by such transaction, but in making the arrangement I had not contemplated the filing of such a deed and did not know that such an one was to be filed, until the time of filing the same. This trust-deed to McNair for $1,000 was filed before the deed of Kenney & wife to the Daviess County Savings Association for $36,680.30 was filed.

(Plaintiffs' counsel objects to each part of the answer as irrelevant, incompetent, and immaterial, and not a part of a re-examination.)

Question. State, if you know, what was the consideration for the deed of trust, executed by Kenney and wife, for the sum of $1,000.00, to McNair, as trustee for Frank & Darrow.

381 (Plaintiffs' counsel makes same objection as to the last previous question.)

Answer. The consideration was the procuring of the loan by Frank & Darrow for Kenney, or the commission charged Kenney by Frank & Darrow for procuring the loan.

Question. In your cross-examination you testified in relation to having charges of the moneys and discounts and business of the bank and its securities. Please state whether you had the exclusive charge at any time of the business of the bank, without regard to the other officers of the bank.

Answer. I had only such charge of the business of the bank as devolved upon me by virtue of my position as cashier of the bank.

Question. In your cross-examination you spoke of your successor being elected January 1st, 1881. Please state how you were employed by the bank, and for how long a period at a time.

Answer. Previous to 1873 I was employed by the year. After the passage of the present banking law in Missouri, I was subject to removal by the directors at any time. I was elected from year to year as cashier for the whole period from 1873 up to 1881.

Question. You stated that Col. McFerran was a director in 1879. Do you know how long he served as such director?

Answer. He ceased to serve when the law rendering him *ille*gible as a non-resident took effect, some time in fall of 1879; November of that year is my remembrance.

Question. When did your year's service for 1880 begin?

Answer. With the first of January, 1880.

Question. Please state your best knowledge as to when the directors and stockholders of the bank first found out your transaction with Darrow & Kenney relative to this loan from Darrow to Kenney.

382 Answer. In February, 1880.

Question. When was the next regular meeting of the stockholders?

Answer. January 1st, 1881. At that meeting my successor was elected and I was left out.

Recross-examined by T. B. STUART:

Question. Give the date, as near as you can, when the law took effect when the board of directors could remove you at any time.

Answer. I think it was in the year 1878.

ROBERT L. TOMLIN.

Subscribed and sworn to before me this 26th day February, 1881, on the day at the place aforesaid.

My commission expires July 11th, 1881.

WM. T. SULLIVAN,
Notary Public, Daviess Co., Mo.

EXHIBIT A.

GALLATIN, MO., *Jan'y 1st*, 1879.

At a regular meeting of the stockholders of the Daviess County Savings Association, held at the banking-house of the association in Gallatin, on Jan'y 1st, 1879, there were present James McFerran, by his proxy, R. L. Tomlin, James Hemry, John A. Tuggle, and R. L. Tomlin, representing together ninety-one shares out of a total of ninety-seven shares of stock, and the following business was transacted, to wit:

An election was held for the purpose of choosing a president and cashier, and for directors of the association for the year 1879, and James
383 Hemry was chosen for president and R. L. Tomlin for cashier for said year 1879, and until their successors are duly elected and enter upon the discharge of their duties. The salary of the cashier was fixed at seventy-five dollars per month, and Frank Clingan was employed as clerk for the year 1879 at a salary of forty dollars per month, the salary of the cashier and clerk to be paid monthly. The following named persons were chosen as directors for the year 1879, viz: James Hemry, John A. Tuggle, James McFerran, and R. L. Tomlin.

There being no further business the stockholders' meeting adjourned.

R. L. TOMLIN, *Sec'y.*

JOHN A. TUGGLE, of lawful age, being produced, sworn, and examined on part of defendants, deposeth and saith:

My name is John A. Tuggle; I am 73 years of age; reside in Monroe T'p, Daviess County, Mo.; I am a director in the Daviess County Savings Association; have been director about all the time since its organization, in 1865; I was a director in 1879; I was present at a regular meeting of the stockholders in said association held in the banking-house in Gallatin, Mo., January 1st, 1879, and the minutes of that meeting, here shown me, were made at that time (which minutes are by agreement of parties copied and attached to this deposition and marked "Exhibit A"). The copy here shown me is a true copy of the record of that meeting. (The copy thus identified by witness is hereto attached and marked "Exhibit A.") I have

acted as director to some extent ever since I was appointed as such; never refused to act; I live nine miles from Gallatin, Mo.

384 I am at Gallatin about once a month, and sometimes twice a month; sometimes staying a week at a time; I was in the bank frequently. I never gave much attention to the affairs of the bank; did give it some, however. R. L. Tomlin never consulted me with reference to entering satisfaction of record on deeds of trust, and I never knew anything about his doing so until after this case came up, as I now remember. The board of directors never authorized him to enter such satisfaction that I know of. I never knew anything about the loan of money by Geo. W. Frank & Darrow to P. S. Kenney until after it was made. I first found out that such a loan had been made about a year ago. I never had heard of it before. I think it was about that time; would not be positive. I learned for the first time about one year ago that Tomlin had agreed to release, and had assumed to release by entering satisfaction of record in Caldwell County, the Kenney deeds of trust and give to plaintiffs in this case a prior lien. Tomlin had never consulted me with reference to the matter nor was there any action of the board of directors in reference to the matter prior to my hearing that it had been done by Tomlin that I know of. I am not acquainted with Lew E. Darrow; have never seen him that I know of. No one ever consulted me with reference to the satisfaction of the Kenney deeds of trust before Tomlin had entered satisfaction. I was in Daviess County in 1879; was not away any length of time at any one time; may have been out of county for a short time. I was presiding judge of county court in 1879, and attended the regular sittings of the court. Don't remember missing any term in 1879. Have never missed but one or two terms since then; would not be sure

385 whether one or two; and was then at Jefferson City. I think the notice of the annual election of officers of the Daviess County Savings Association have usually been published in the Gallatin Democrat.

Cross-examined by T. B. STEWART, att'y for plaintiffs:

The stockholders of the Daviess County Savings Association in 1879 were James McFerran, John A. Tuggle, James Hemry, R. L. Tomlin, H. C. McDougal, as I remember. H. C. McDougal owned two shares, I think. I do not remember how many of the stockholders were at the meeting Jan. 1st, 1879. The directors met twice a year, I think. When I was at Gallatin the times I speak of, sometimes once or twice a month. I was most of the time at court. I could not say whether we ever had meetings of directors prior to 1879, except when advertised; I do not recollect of any meeting of directors except when advertised. There has been a meeting of directors since this loan was made, but I do not remember of any before. I did not do anything about running the affairs of the bank at the times I speak of being in town, except that I inquired about how the bank was running. I would go in and ask the officers how the bank was getting along. I never examined the books, money, or notes of the bank. I saw Col. McFerran and Mr. Hemry examine the books, notes, paper, &c., before this loan was made. I could not say just how many times they examined them. Sometimes I saw Col. McFerran examine them by himself, and sometimes Mr. Hemry would do so by himself. I could not say just how many times I saw Hemry there examining the

books. I could not say how often I saw either of them examining books, papers, &c. I could not say whether these examinations I speak of were made at regular meetings of the directors or between such meetings. I don't remember whether I ever saw them making examinations at
386 any other time than at regular meetings. This book which I examined is a record of the proceedings of the board of directors, I suppose. This book does not show any record of meetings of the board of directors or other officers of the bank for four years, from 1865 to 1869, and this record shows that the next meeting after December 18th, 1869, was January 2nd, 1872. As shown in this book the meetings of the board of directors were simply for the purpose of electing officers and declaring dividends. I don't think there is anything in that book fixing my authority as a director, except that I was elected; and I don't know of anything in that book prescribing rules for the board of directors. From about 1873 up to 1879 the president of the bank was absent in Colorado. Mr. R. L. Tomlin and Mr. F. Clingan were attending to the business of the bank from about 1873 up to the time this loan was made. Mr. Clingan was clerk. I supposed Col. McFerran was superintending the business of the bank all the time while he was in Colorado. When a man applied to the bank for a loan, or to have a deed of trust changed, or the security changed, my understanding was that Mr. Tomlin attended to it. I suppose that Tomlin had been attending to such matters from 1873 up to the time this loan was made. I understand that deeds of trust were being given to the bank. I don't know that I saw any up to the time of this loan. I knew that it was necessary to cancel deeds of trust in the course of the bank's business. I also knew that the business of the bank was varied and presented itself in different forms. And I understood that Mr. Tomlin was properly attending to this matter. I never questioned Mr. Tomlin's right to cancel a deed of trust from 1873 up to 1879, and never knew of another director questioning his right during that time. It was expected by me that he would go on under the superintendence of Col. McFerran, and
387 transact the business to the best interests of the bank. There is nothing in the record in this book, that I know of, that placed the business of the bank under the especial supervision of Col. McFerran. I understood that he would superintend it; that was my supposition. I should think it would be more binding on the bank if Col. McFerran had cancelled these deeds of trust instead of Mr. Tomlin.

Question. Suppose Kenney had gone to Colorado and Col. McFerran had cancelled the deeds of trust without consulting the directors, do you consider it would be binding?

(Objected to by defendant, because leading, hypothetical, and not seeking to elicit any fact in the cause, and because the witness is not a lawyer nor a common-law judge.)

Answer. I am not lawyer enough to answer that question. (Witness continued:) Tomlin was acting as cashier of the bank from about 1873 up to the time of making this loan, and, so far as I know, was transacting generally all the business necessary to be transacted here at the bank.

Question. Who then was acting as the general agent of the bank here in Gallatin during this period, from 1873 to 1879?

Answer. Mr. Tomlin was cashier and doing the business. Tomlin never

told me of cancelling these deeds of trust or any others that I remember. He may have told me, but I do not remember now. I understood that he was cancelling deeds of trust whenever it was necessary.

Question. Suppose a man applied to the bank for a loan on deed of trust, and afterwards gave other security and wanted those lands released, whom did you expect would cancel the deed of trust given and attended to the business?

Answer. I expected Tomlin attended to it.

Do you suppose that he had such authority from about 1873 up
388 to the time this loan was made?

Answer. I understood he was doing it. I never thought much about it, and knew nothing about his authority.

Question. You have said before that you expected him to do such acts as that. Now, if you expected him to do it, you supposed he had authority to do it?

(Objected to by defendants, on ground that it's argumentative, hypothetical, leading, and not seeking to elicit any fact pertinent to the case, and asking for the opinion of the witness on a matter of law, and the question assumes a fact that witness has not testified to.)

Answer. I don't remember of stating that I expected him to do it.

Question. Now, supposing that in 1878 a man should have come into the bank and want a deed of trust cancelled which he had given previously for a loan, and wanted to give a new deed of trust on different property to secure that loan, whom did you expect to attend to that business?

(Objected to because it's leading, a mere supposition, without foundation in fact, involving questions of law, and expecting the witness to do more than he had a right to do under the law or his authority, and assuming that the witness expected and desired Tomlin, cashier, to exceed his authority and do acts in violation of law.)

Answer. I think that question has been answered a time or two. My understanding is that Tomlin was doing the business of the bank.

Question. How soon after this loan in controversy was it that you heard of it?

Answer. I could not say; I don't remember who first told me about it.

Question. What did you do when you first heard of it?

389 I did not do anything.

Question. How long before you first heard of it before you made up your mind you would go back on it?

Answer. I went back on it as soon as I heard of it, at least as far as my feelings were concerned.

Question. How did you go back on it; what did you do or say, and who to?

Answer. I don't think I did anything or said anything until I met the directors. I don't know as I can tell just who I talked with about it. I did not talk to any except directors about it that I remember of now.

Question. Now, the meeting of the directors you refer to was in January or February, 1880?

Answer. I think it was either in January or February, 1880. I would not be positive about it.

Question. Col. McFerran was present at that meeting, wasn't he?

Answer. I think he was.

Question. Prior to that meeting did you or any of the directors say anything about going back on it?

Answer. Yes, sir. I think some time before that meeting Mr. Hemry, I think it was, spoke to me about going back on that transaction. I could not say just how long before that meeting, nor could not repeat his words. The sum and substance was that Tomlin had been making this deal with the Iowa party and Mr. Kenney. I cannot give Hemry's language.

Question. Give, as near as you can, the substance of all that he said.

(Objected to as eliciting hearsay evidence and because previously answered.)

Answer. I cannot give his words. It was my understanding that he was displeased with the transaction.

390 Question. In January, when the board met, then you did go back on it, clear back, did you?

Answer. Yes, sir.

Question. I call your attention to the record of your meeting (on both pages), January 1st, 1881, and ask you to attach a copy of that record, as Exhibit B, to your deposition; and I further ask you if there is one word said in that record about that transaction?

(The latter clause of the question objected to by defendant; that part asking what is in the record, as in violation of the stipulation of the parties hereto and contrary to law, the copy being all they are entitled to, under the stipulations.)

Answer. I don't see any mention of the transaction on the record. I will attach copy of the record of the meeting in January, 1880.

(A copy of the record here referred to is hereto attached and marked "Exhibit B.")

Question. I will now ask you to examine that record and see if you can find any record of any meeting where the board ever went back on this transaction, and, if you can, attach it hereto, as "Exhibit C" to your deposition.

(Objected to by the defendants, that plaintiffs have no right to require witness to search records, and that it is in violation of the stipulations under which these depositions are taken, which only authorizes them to have a copy of such as they shall indicate that they desire, and that they have no right to make witnesses make copy or swear them to make them.)

Answer. My understanding was that they were displeased with it. I do not know that any record of their displeasure was made. I have examined the record and don't see anything particularly touching this transaction.

391 Question. When you went back on it, what did you do with the new note and mortgage that Kenney had given?

Answer. I do not know; I suppose the bank still holds that new note and deed of trust. I have not examined the papers. I do not know of the bank ever tendering back any moneys or papers which they got by virtue of that transaction.

Question. Which one of the debts against Kenney did the directors decide to collect, the old note or new note?

Answer. I don't remember about that.

Question. Do you think you are entitled to both of them—the old note and the new note given by Kenney?

Answer. I don't know enough about the transaction to tell you.

Re-examined by defendants' counsel:

Question. You spoke in your cross-examination of Tomlin transacting the business of the bank; I want to know if you expected him to transact such business as cashier within the law or without the law, or whether you expected him to exceed his authority as cashier and transact it without regard to law?

(Objected to by plaintiff's counsel as very leading and suggestive.)

Answer. The presumption was with me that he would transact it within the law. I am no lawyer and don't know what the law was. I made no calculation that he would exceed his authority. I did not expect or desire him to exceed his authority.

Question. In your cross-examination the deposition makes you state that the board of directors went back on the Geo. W. Frank & Darrow and Kenney transaction in their meeting January 1st, 1880; I will ask you to refresh your memory as to the dates, and state when the action was taken by the board in that transaction.

392 Answer. I think upon reflection that it was in February, 1880. I only heard of the transaction first a short time before that meeting in February.

Question. I will get you to state what action the board took at that meeting.

Answer. The members of the board agreed to resist the transaction between Darrow, Kenney, and Tomlin, as I understood from them; and I further understood that they ordered the sale of the Kenney land under the old deeds of trust.

(Plaintiff objects to the witness stating his understanding, as incompetent.)

Question. Don't you know what was done and said?

Answer. I was there and only knew what you all said. It was agreed to resist the transaction and the sale of the lands was ordered. I am a little forgetful, but I remember that was said; I don't think any record was made of it. I don't know whether the land was advertised or not.

Question. You say in your cross-examination that Tomlin was transacting the business of the bank, and that you knew or understood that the bank was receiving deeds of trust and cancelling them in its business, and that you expected Tomlin to transact the business of the bank; now I will get you to state whether or not you expected Tomlin to release deeds of trust if he had no authority to do it, or if it was illegal for him to do it, as cashier, or whether or not you expected him to do what he had authority and a legal right to do, and if he had no authority to release deeds of trust, whether you expected them to be released by him or whoever had authority?

(Plaintiffs' attorneys object to each part of the question as leading.)

Answer. As a matter of course, I expected them that had au-
393 thority to do it. As I before said, I didn't know what authority he had. I did not know whether he had authority or not.

Recross-examined by plaintiffs' att'ys:

Question. You now say since you have refreshed your memory that the board of directors concluded to go back on this transaction in February, 1880. I will now ask you if this record of the bank don't fail to show

any record of any meeting of the board in February, 1880, there being no meeting of the board as shown by this record between January 1st, 1880, and April 6th, 1880?

Answer. I don't see any record of any meeting in February, 1880, or any record of any meeting between the dates you name.

Question. Now, at the meeting you speak of who did the talking and what was said?

Answer. I could not recollect all that was said about it. I recollect there was talk about resisting that transaction between the Iowa Company and Mr. Kenney. I think most of the conversation was between Col. McFerran, Mr. Hemry, and myself.

Question. Was or was not Col. McFerran the leading spirit in that resistance at that meeting?

Answer. I think he was. He don't deny it.

Question. It was his advice that you should resist it, was it?

Answer. Yes, sir; it was the opinion of all the directors present to resist the transaction.

JOHN A. TUGGLE.

Sworn to and subscribed to before me this 26th day of February, A. D. 1881, at the place and date aforesaid and within the hours named.

My term of office expires July 11th, 1882.

[SEAL.] WILLIAM SULLIVAN,

394 *Notary Public, Daviess Co., Mo.*

It is agreed by both parties, plaintiff and defendant, that the taking of these depositions shall proceed without regard to time, and the hours mentioned in the notice and under the statute are hereby waived.

Feb'y 25th, 1881, 6 o'clock p. m.

STUART BROS. ET AL.,
Att'ys for Plaintiffs.
JAMES McFERRAN AND
J. A. HOLLIDAY,
Att'ys for Defendants.

STATE OF MISSOURI,
County of Daviess, ss:

I, William T. Sullivan, notary public within and for the county of Daviess and State of Missouri, commissioned and qualified for a term of four years, expiring July 11th, 1882, do certify that in pursuance of the annexed notice came before me, at the office of J. A. Holliday, in the city of Gallatin, county of Daviess, and State of Missouri, Robert L. Tomlin and John A. Tuggle, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined, and their examination reduced to writing and subscribed by them respectively in my presence on the day, between the hours (except as modified by the stipulations of the parties hereto, signed by their attorneys and attached hereto) and at the place in that behalf first aforesaid; and that their said depositions are now herewith returned; and I further certify that said Robert L. Tomlin and John A. Tuggle are residents of said county of Daviess and the State of Missouri.

In testimony whereof I have hereto set my hand and affixed my notarial seal this 26th day of February, A. D. 1881.

395 [SEAL.] WM. T. SULLIVAN,
Notary Public, Daviess Co., Mo.

Fees for taking depositions:

Notary's fees, Wm. T. Sullivan, notary public, for taking depositions, 13,550 words with certificate and seal.....	$14 00
Witnesses' fees:	
Robert L. Tomlin, one day.....	75
John A. Tuggle, one day.....	75
	$15 50

Notary's fees, $14.00, paid by the Daviess County Savings Association this 26th day of February, A. D. 1881.

WM. T. SULLIVAN,
Notary Public.

396 *Notice to take depositions in U. S. courts.*

UNITED STATES OF AMERICA,
Western District of Missouri, set:

In the circuit court of the United States for the western district of Missouri, western division.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, complainants,
against
ALPHONSO L. MARTIN, WILLIAM W. CLEVENGER, and the Daviess County Savings Association of Gallatin, Davis County, Missouri, defendants.

You, the above-named complainants, or Stuart Bros., your attorneys of record, are hereby notified that on Tuesday, the 2nd day of August, A. D. 1881, the above named will, in the above-entitled suit, at the law office of William Harrison, esq., in the city of Colorado Springs, in the county of El Paso, in the State of Colorado, take depositions of R. L. Tomlin and James H. B. McFerran, to be used as evidence on the trial of said suit and on the hearing of each and every motion and application therein. Said depositions will be taken because the testimony of said witness is necessary on the trial of said action, and said witnesses live more than one hundred miles from the place of trial of said action. And the said cause is a suit in equity. And that the taking of said depositions will be commenced at nine o'clock a. m. of said day, and that the taking of the same will be adjourned and continued from day to day, Sundays excepted, at the same place, until the taking of the same is completed.

Dated this first day of July, A. D. 1881.

McFERRAN, HOLLIDAY & WATERS,
Attorneys for Defendants.

397 Service of the above notice is hereby accepted, and issue of dedimus and all exceptions as to time are hereby waived this 12 day of July, 1881. Copy of int's to be served on pl'ffs' att'ys by July 1st. Cross-int's to be returned to def'ts' att'ys by July 3rd. This notice and the int's to be sufficient authority for the notary without dedimus, and he shall take the depositions on the date stated, or as soon thereafter as he may receive the notice and interrogatories.

STUART BROS.,
Att'ys of Record for Pl'ffs.

In the United States circuit court for the western division of the western district of Missouri.

ALBERT S. WEBB ET AL., COMPLAINANTS,
THE DAVIESS COUNTY SAVINGS ASSOCIATION et al., defendants. } In chancery.

Interrogatories to be propounded to R. L. Tomlin under the annexed notice on behalf of the defendants in the above-entitled cause:

Interrogatory first. What is your name, age, occupation, and your present residence?

Inter. second. Are you acquainted with the parties to this suit; and, if so, when, where, and how long did you know them?

Inter. third. Please state what position you held, if any, in the defendant corporation, the Daviess County Savings Association, of Gallatin, Daviess Co., Mo., by what authority you held the same, and for how long a time you occupied that position and discharged its duties.

Inter. fourth. If in answer to inter. third you state you were cashier of the Daviess County Savings Association, please state whether you
398 at any time held or discharged the duties of any other position with respect to said association at any time; and, if so, what that position was, and what duties you discharged.

Inter. fifth. Who were the officers of the Daviess County Savings Association during the time you were its cashier.

Inter. sixth. Was there any such officer as general manager or general agent of said association; and, if so, who was such manager or agent?

Inter. seventh. What authority, if any, did you have to discharge any duties with respect to said corporation, except the duties of cashier?

Inter. eighth. Were you present at the time the loan by complainants to Patrick S. Kenney was consum'ated, and at the time the deed of trust by Kinney to them was recorded? And, if so, please state who was present representing complainants. Whether at that time any run was being made or threatened upon the said savings association; whether or not at that time said association was in great or pressing need of money for any purpose, and what position, at that time, you held with respect to said association, and whether you were present at the place where said loan to Kinney was being consum'ated by direction of the said corporation or on your own motion.

Inter. ninth. Please state whether at the time you entered the pretended satisfaction of the various deeds of trust held by said association on Kin-

ney's real estate in Caldwell Co., Mo., whether or not the debts secured by said deeds of trust, or either of them, or any part thereof, had been paid, or whether or not at that time any arrangement had been or was made for the payment of the same; and, if so, state particularly as
399 to what payment had been made or was to be made, and whether or not the complainants or their agent and the said Kinney, or either or any of them, knew of the circumstances attending said pretended entries of satisfaction, and the reason why the same were entered.

Inter. tenth. To whom did Kinney pay the money he borrowed from complainants, and state whether or not the deed of trust and the judgments paid thereout belonged to said association, and state whether or not complainants knew who were the owners of said deed of trust and judgments.

Inter. eleventh. Please state whether or not the complainants or their agent, at the time they loaned Kinney the sum of $10,000, and at the time they paid over the same on said loan, knew that the deeds of trust held by said savings association were unpaid, and whether or not they knew that said pretended entries of satisfaction of said deeds of trust were made without payment or satisfaction. Please state all you know of said transaction.

Inter. twelfth. State, of you know, what position James H. B. McFerran occupied with respect to said savings association, and where he and the various officers of the said association resided in June, 1879.

Inter. thirteenth. If there is anything you know which would be material to the issues herein, please state the same as particularly as if particularly interrogated in relation thereto.

Interrogatories to be propounded to James H. B. McFerran, under the annexed notice, on behalf of defendants in the above-entitled cause.

Interrogatory first. What is your name, age, occupation, and place of residence, and how long have you resided at your present place of residence?

400 Inter. second. State if you are acquainted with the parties to this suit; and if so, how long have you known them.

Inter. third. State what you know, if anything, about the organization of the Daviess County Savings Association, when and where it was organized, its capital stock, your connection with said association, if you were connected with it, how long, and in what capacity you were or are now connected with said association.

Inter. fourth. If there has been a general manager of said association please state who was such general manager and by what authority such manager exercised such duties.

Inter. fifth. When did you remove from Gallatin, Mo., to your present residence and where have you lived since, and since then what have been your relations with said association? And if you have had any control of the affairs please state in what manner you exercised such control.

Inter. sixth. Who succeeded you as president of said association, if any one?

Inter. seventh. Please state if you know what position R. L. Tomlin held with respect to said association, how long he was thus connected with the same, and what duties he was authorized to perform, and what instruc-

tions he had, if any, in regard to the management of the affairs of said bank.

Inter. eighth. If said Tomlin ever had any authority as a manager or otherwise to discharge any duties with respect to said association or the management or disposition of its property other than those you have described, please state the same fully.

401 Inter. ninth. State whether or not you visited the association at any time between May, 1879, and February, 1880, and if so, when and what report, if any, Tomlin made to you of the loan of any money by complainants to Kinney or of said pretended entries of satisfaction of the deeds of trust held by the association on said Kinney's lands; if no such report was made, please state fully and particularly how you became apprized of said transactions and what steps, if any, were then taken to assert the rights of said association in the premises.

Inter. tenth. Please state what action was taken by the association, its officers, directors, or stockholders in relation to the transactions mentioned in your answer to inter. nine.

Inter. eleventh. Please state what, if anything, was done by said association or its directory or officers to approve or ratify the action of said Tomlin in relation to said pretended entry of satisfaction of said deeds of trust.

Inter. twelfth. If you know anything material to the matters in issue herein, concerning which you have not been interrogated, please state the same as fully as if thereunto particularly interrogated.

HOLLIDAY, WATERS & McFERRAN,
Def'ts' Att'ys.

UNITED STATES OF AMERICA, *ss:*

Circuit court of the western division of the western district of the State of Missouri, sitting at Kansas City.

Be it remembered that on this 2nd day of August, in the year of
402 our Lord one thousand eight hundred and eighty one, I, A. L. Lawton, a notary public in and for the county of El Paso and State of Colorado, did call and cause to be and personally appear before me, at the law office of Wm. Harrison, esq., in the city of Colorado Springs, in the county of El Paso, in the State of Colorado, in the district of Colorado, James H. B. McFerran to testify and the truth to say on the part and behalf of the defendants in a certain civil cause or matter of controversy now depending and undetermined in the United States circuit court for the western division of the western district of Missouri at Kansas City, wherein Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, complainants, against Alfonso L. Martin, William W. Clevenger, and the Daviess County Savings Association, of Gallatin, Daviess County, Missouri, defendants.

And the said JAMES H. B. MCFERRAN, being about the age of sixty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, so far as he knows, in the matter of controversy aforesaid, I did carefully examine the said James H. B. McFerran, and he did thereupon depose, testify, and say upon the following interrogatories and in answer thereto as follows:

Interrogatory first. What is your name, age, place of residence, and how long have you resided at your present place of residence?

Answer. My name is James H. B. McFerran; age, 61; occupation, a banker; residence, Colorado Springs, Colorado; have resided at Colorado Springs, Colorado, for the last eight years.

403 Int. 2nd. State if you are acquainted with the parties to this suit; and if so, how long have you known them?

Ans. I am not acquainted with the plaintiffs in this suit, nor with William W. Clevenger, defendant. Have known defendant Martin for more than twenty years and the Daviess County Savings Association since its organization, in A. D. 1865.

Int. 3rd. State what you know, if anything, about the organization of the Daviess County Savings Association, when and where it was organized, its capital stock, your connection with said association, if you were connected with it, how long, and in what capacity you were or are now connected with said association.

Ans. The Daviess County Savings Association was organized in A. D. 1865, at Gallatin, Daviess County, Missouri, with a capital stock of about five thousand dollars which has since been increased to near ten thousand dollars paid-up capital. I was connected with the association as principal stockholder at the time of the organization, and have at all times and still own a majority of its stock in my own right. I was also president of said association from its organization until about the first of January, A. D. 1880. I was also general manager of the institution from its organization and still act in that capacity.

Int. 4th. If there has been a general manager of said association, please state who was such general manager, and by what authority such manager exercised such duties.

Ans. I was the general manager of said association from its organization with the consent and acquiescence of the stockholders and directors of said association.

Int. 5th. When did you remove from Gallatin, Missouri, to your
404 present residence, and where have you lived since, and since then what have been your relations with said association? And if you have had any control of its affairs, please state in what manner you exercised such control.

Ans. I did not remove from Gallatin, Missouri, to my present residence in Colorado Springs, but removed from Chillicothe, Missouri, to my present residence, where I have lived since A. D. 1873. And since my removal to my present residence my relations with said association were as director and president until Jan. 1st, 1880, and general manager of said association to the present time. I retained and exercised control of the affairs of said association by correspondence through the telegraph and mails and by visiting the institution once a year and examining its condition, with the exception of the year A. D. 1879, when, owing to indisposition, I procured George W. Trimble, a bank expert, to visit the bank and report its condition to me for the year 1879. He done so in January, A. D. 1880. The correspondence in relation to the affairs of the association were conducted with the cashier of the association.

Int. 6th. Who succeeded you as president of said association, if any one?

Ans. James Hemry succeeded me on or about the first of January, A. D. 1880, and is still president of said association.

Int. 7th. Please state if you know what position R. L. Tomlin held with respect to said association, how long he was thus connected with the same, and what duties he was authorized to perform and what instructions he had, if any, in regard to the management of the affairs of the said bank.

Ans. R. L. Tomlin held the position of cashier of the Daviess
405 County Savings Association from 1870 to the first of January, 1881. He was authorized to perform the duties of cashier of said association usually pertaining to that position and was authorized to receive deposits and loan the funds of the institution and take securities for the same at the counter in the ordinary routine of business subject to my approval or the approval of the board when brought to our knowledge by said cashier. Said cashier was instructed upon my removal to Colorado to report fully the business of the institution to me by mail or telegraph, and in matters of importance to the association he was instructed by me to report the same to me before taking action, and upon receiving my instructions he was authorized to act, but not otherwise. His instructions were to do the ordinary routine business of the bank at the counter without first reporting the same to me, but subject to my approval or the approval of the board of directors. Further than this he had no instructions or authority to act for the bank without first obtaining the consent of the board of directors or myself.

Inter. 8th. If said Tomlin ever had any authority as manager or otherwise to discharge any duties with respect to said association or the management or disposition of its property other than those you have described, please state the same fully.

Ans. He had no authority as manager or otherwise, that I know of, to discharge any duty with respect to said association or the management or disposition of its property other than such as legitimately grew out of his position of his office as cashier, and arising out of the instructions before stated.

Inter. 9th. State whether or not you visited the association at any
406 time between May, 1879, and February, 1880; and, if so, when and what report, if any, Tomlin made to you of the loan of any money by complainants to Kinney or of said pretended entries of satisfaction of the deeds of trust held by the said association on said Kinney's lands; if no such report was made, please state fully and particularly how you became apprized of said transactions and what steps, if any, were then taken to assert the rights of said association in the premises.

Ans. I did not visit the Daviess County Savings Association at any time between May, 1879, and February, 1880, but sent Mr. Trimble to visit the institution between said dates, as before stated. I visited the institution in February, 1880, and as soon as I obtained information of the contract and transaction in relation to Kinney's loan and the release of the association's security on Kinney's lands. Tomlin never made any report to me, either through Mr. Trimble, by mail or telegraph, or otherwise, until I called on him at the bank, in Feb., 1880, after having had the records of Caldwell Co., Missouri, examined, and ascertaining for the first time what Tomlin, the cashier, had done in relation to entering satis-

faction of the association's deeds of trust on said Kinney's land and in connection with the complainants' loan to Kinney. I first learned through Mr. Trimble, in January, 1880, that Tomlin claimed there was a deed of trust on Kinney's lands for ten thousand dollars, senior and superior to the deeds of trust of the Daviess Co. Savings Association, but nothing in relation to the pretended entries of satisfaction of the association's deeds of trust on the records of Caldwell County, Missouri, or the complainants' loan to Kinney. As soon as I learned through the above of the superior lien claimed by Tomlin I had the records of Caldwell County, Missouri, examined by J. A. Holliday, esq., and as soon as I found their
407 true condition, and what Tomlin had done, I went immediately to Missouri, and a meeting of the directors was held at the bank in Gallatin, Mo., in which the matter was investigated, and as soon as its condition was known to them it was unanimously rejected and repudiated. I was present at said meeting, and directions were then and there given to James Hemry, the president of said association, to foreclose plaintiffs' original deeds of trust on said Kinney's lands by advertising the same under the powers of sale contained therein.

Int. 10th. Please state what action was taken by said association, the officers, directors, or stockholders, in relation to the transaction mentioned in your answer to interrogatory nine.

Ans. They unanimously rejected and repudiated Tomlin's action in entering satisfaction of defendant's original deeds of trust and his entire action in relation to the loan of ten thousand dollars by the complainants to said Kenney and his connection therewith, and also the responsibility of the bank therefor.

Inter. 11th. Please state what, if anything, was done by said association or its directory or officers to approve or ratify the action of said Tomlin in relation to said pretended entry of satisfaction of *of* said deeds of trust.

Ans. There was nothing done by said association or its directory or officers, to my knowledge ("other than by said Tomlin"), to approve or ratify the action of said Tomlin in relation to said pretended entry of satisfaction of Kinney's deeds of trust to the association, but the same was rejected and repudiated, as before stated, by said stockholders, directors, and officers of said association other than said Tomlin.

408 Int 12th. If you know anything material to the matters in issue herein, concerning which you have not been interrogated, please state the same as fully as if thereunto particularly interrogated.

Ans. Deponent states, in answer to said interrogatory, that said Tomlin, as cashier of the defendant, never had any authority directly conferred or arising by implication from the ordinary course of business of the defendant to cancel the obligations due it or to enter its securities or liens satisfied without actual payment thereof, to the best of my knowledge and belief, and such action by said Tomlin, if in fact existing prior to the transaction in controversy, was without the knowledge or consent and never ratified, confirmed, or acquiesced in by the defendant, its officers, or directors, other than said Tomlin, to the best of my knowledge and belief; that said Tomlin was never authorized by the defendant or its agents to make the contract or enter said Kenney's deeds of trust to the defendant satisfied, or to cancel his indebtedness to the defendant in connection with complainant's loan to said Kenney, or otherwise, and said proceedings have never

been acquiesced in by the defendants or its agents, other than said Tomlin, to the best of my knowledge and belief; that the note and deed of trust executed by said Kenney and wife to the defendant in consum'ation of the contract in controversy was also unauthorized by the defendant and its agents, other than said Tomlin, and has never been ratified and confirmed by the defendant, and the defendant claims nothing under the same, but claims under the original note and deeds of trust due and owing from said Kenney to it; that the owners of the defendant who have a controlling interest therein had it in contemplation to wind up the defendant
409 and its business for some time before the 30th day of June, 1879, the date of the contract in controversy, which determination to wind up or dispose of the defendant and its business was known to said Tomlin; before the consummation of said contract and transaction in controversy said Kenney was in possession of said lands in controversy and residing thereon at the time he procured the loan before referred to from the complainants.

And further deponent saith not.

JAMES H. B. McFERRAN.

STATE OF COLORADO,
County of El Paso:

Subscribed to before me this 5th day of Aug., A. D. 1881, at the law office of Wm. Harrison, esq., in the city of Colorado Springs, county of El Paso, & State of Colorado.

[SEAL.] A. L. LAWTON,
Notary Public.

The taking of the foregoing deposition was commenced at 9 o'c. a. m., on the 2nd day of August, A. D. 1881, at the law office of Wm. Harrison, esq., in the city of Colorado Springs, Colorado; the plaintiff and their counsel failing to appear and furnish cross-interrogatories to the defendant witness, the further taking of this deposition is adjourned until to-morrow morning, the 3rd day of August, A. D. 1881, at the same place, at 9 o'c. a. m., to give the plaintiff an opportunity to appear and file cross-interrogatories to the defendant witness, if they think proper to do so, at which time the taking of said deposition will proceed.

[SEAL.] A. L. LAWTON,
Notary Public.

On this 3rd day of August, A. D. 1881, at the law office of Wm. Harrison, esq., in the city of Colorado Springs, county of El Paso, & State of Colorado, pursuant to the foregoing adjournment, at 9 o'c. a. m. of
410 said day, the plaintiffs and their council failing to appear or furnish any interrogatories to be propounded to said witness, with the consent of the defendant the further taking of this deposition is adjourned until to-morrow morning at nine o'clock a. m., the 4th day of August, A. D. 1881, at the same place, to enable the plaintiff or his attorneys to appear or file cross-interrogatories to the defendant witness, if they think proper to do so, at which time, if cross-interrogatories are produced, the further taking of this deposition will proceed.

[SEAL.] A. L. LAWTON,
Notary Public.

On this 4th day of August, A. D. 1881, at the law office of Wm. Harrison, esq., in the city of Colorado Springs, county of El Paso, and State of Colorado, pursuant to the foregoing adjournment at 9 o'c. a. m. of said day, the plaintiffs and their council failing to appear or furnish any interrogatories to be propounded to said witness, said witness having appeared at 9 o'c. a. m. on the 2nd, 3rd, & 4th days of August, A. D. 1881, ready for cross-examination on interrogatories with the consent of the defendant, the further taking of this deposition is adjourned until 9 o'c. a. m. on the 5th day of August, 1881, at the same place to enable the plaintiff to appear and present cross-interrogatories to the defendants' witness if they think proper to do so, at which time if cross-interrogatories are produced the further of this deposition will proceed.

[SEAL.] A. L. LAWTON,
Notary Public.

On this 5th day of August, A. D. 1881, at the law office of Wm. Harrison, esq., in the city of Colorado Springs, county of El Paso, and State of Colorado, pursuant to the foregoing adjournment at 9 o'c. a. m.
411 of said day, the plaintiffs and their counsel failing to appear or furnish any interrogatories to be propounded to said witness, said witness having appeared and being ready for cross-examination on interrogatories, and the plaintiffs and their counsel failing to appear and file or furnish interrogatories to said witness, thereupon the taking of this deposition is completed, and the said witness is directed to sign his testimony, which he has done in my presence as appears.

[SEAL.] A. L. LAWTON,
Notary Public.

UNITED STATES OF AMERICA:

I, A. L. Lawton, a notary public in and for El Paso County, in the State of Colorado, and in the district of Colorado, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is materially necessary in the cause in the caption of said deposition named, and that James H. B. McFerran, the witness, lives more than one hundred miles from the place of trial of said cause. I further certify that on the 2nd day of Aug., A. D. 1881, and on the subsequent days of the 3rd, 4th, & 5th of said month, A. D. 1881, I was attended by James H. B. McFerran, the witness, who is of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth so far as he knows, and his said deposition was by me reduced to writing in the presence of the said witness, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of mailing the same until it was sealed and directed to the clerk of said circuit court, at Kansas City, and
I do further certify that I am not of counsel nor attorney for either
412 of the parties in caption named, nor in any way interested in the event of this suit, and I further certify that said deposition was taken in pursuance of the annexed notice and interrogatories hereto annexed and herewith returned at the time and place in said notice specified. And said deposition is now herewith returned. I further certify that

Robert L. Tomlin, whom interrogatories were addressed, as well as to said James H. B. McFerran, did not appear and testify.

In testimony whereof I have hereunto set my hand and affixed my seal this 5th day of August, A. D. 1881, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] A. L. LAWTON,
Notary Public.

And I further certify that my fees are as follows for taking the foregoing deposition:

2,900 words, at 15 cents per 100	$4 35
For swearing witness	25
For certificate & seal	50
For postage	24
	$5 34

Which amount of $5.34 was rec'd by me from the defendants.

[SEAL.] A. L. LAWTON,
Notary Public.

413 *Agreement to take the deposition of the person hereinafter named.*

THE STATE OF MISSOURI,
Daviess County:

ALBERT S. WEBB ET AL., PLAINTIFFS,
vs.
THE DAVIESS COUNTY SAVINGS ASSOCIATION et al., defendants. } No. 337.

In the U. S. circuit court, at Kansas City, in the State of Missouri.

In the above-entitled cause it is hereby agreed that the deposition of the following-named persons, to wit, James Hemry and Patrick S. Kenney, may be taken before Boyd Dudley, a notary public within and for the county of Daviess and State of Missouri, at the office of said Boyd Dudley, in the city of Gallatin, county and State last aforesaid, who is hereby agreed upon as a commissioner for such purposes.

Said depositions to be taken orally, and completed as soon as can be, to be used as evidence on the trial of the above-entitled cause, on the part of the defendants. The notice required by law to be given to the opposite party is hereby waived. Said depositions to be subject to all just exceptions and objections to the relevancy or competency of the testimony, all other exceptions to these depositions being waived.

Gallatin, Mo., May 14th, 1881.

JAMES H. B. McFERRAN &
J. A. HOLLIDAY,
Att'ys for Defendant, and
GILLIHAN & BROSIUS,
STUART BROS,
414 *Att'ys for Plaintiffs.*

It is agreed that when the depositions are complete that James H. B. McFerran shall carry them and deliver them to the clerk of the United States circuit court at Kansas City, Mo., where the cause is now pending.

This May 14th, 1881.

STUART BROS. &
GILLIHAN & BROSIUS,
Att'ys for Pl'ff.
JAS. H. B. McFERRAN &
J. A. HOLLIDAY,
Atty's for Def'd't.

ALBERT S. WEBB ET AL., PLAINTIFFS,
against
THE DAVIESS COUNTY SAVINGS ASSOCIATION,
defendant.

In the United States circuit court at Kansas City, in the State of Missouri.

Depositions of witnesses produced, sworn, and examined on the 14th day of May, in the year of our Lord 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the office of Boyd Dudley, in the city of Gallatin, county of Daviess and State of Missouri, before me, Boyd Dudley, a notary public within and for the county of Daviess aforesaid, in a certain cause now pending in the United States circuit court at Kansas City, in the State of Missouri, between Albert S. Webb et al., plaintiffs, and the *the* Daviess County Savings Association et al., defendants, on the part of the defendant.

PATRICK S. KINNEY, of lawful age, being produced, sworn and examined on the part of the defendants, deposeth and saith:

415 My name is Patrick S. Kinney; I am 49 years old; a farmer by occupation, in Caldwell County, Missouri.

I am acquainted with defendant and with Lew E. Darrow, agent of plaintiffs, and have known the plaintiffs' agent about 2 years, and the def't since 1865. I am acquainted with the lands in controversy and reside on them; have resided on said lands since 1859. In the whole, covered by the different deeds of trust, there are 1,240 acres of land. I am acquainted with the buildings on the land; I built them. The value of the residence and buildings connected with it on the land is about $12,000.00. The land, exclusive of buildings, is worth $27.00 per acre. The description of the land the buildings are on is E. ½ of SE. ¼ of section 3, tp. 57, range 29, in Caldwell County, Mo. On the 30th day of June, 1879, I was indebted to James D. Power in the sum of $5,000.00, which was secured by deed of trust on S. ½ sec. 3, 57, 29, & E. ½ & E. ¼ 57, 29, being 400 acres; and at the same date I was also indebted to the def't The Daviess County Savings Association in the sum of $3,000.00, with accumulated interest, which was secured by deed of trust given M. A. Low, trustee for Leslie P. Barnum, on SE. ¼ sec. 3, 57, 29, & NW. ¼ section 10, and NE. ¼ NE. ¼ sec. 9, all in 57, 29, and for other indebtedness due said bank, in all 320 acres. At this date I was also indebted to the Exchange Bank of Breckenridge, Missouri, which held a judgment against me in the amount of $1,129.95; and was also indebted to one

Thomas Ryan, by judgment, in the amount of $775.06. Neither the Powers debt, the Breckenridge bank debt, or Ryan debt were being pushed for collection at that time, to wit, June 30th, 1879.

The loan of $10,000.00 made by plaintiffs, through their agent Darrow, of the firm of Geo. W. Frank & Darrow, to me was not made to prevent sale of lands under the last-mentioned items of indebtedness. There
416 was no representations made by my agent, Mr. R. L. Tomlin, or myself, to my knowledge, that any of said last-mentioned indebtedness was being pushed for collection on said 30th day of June, 1879. This loan was not made to prevent the sale of any of his said *said* lands, and there were no such representations made to Mr. Darrow, plaintiffs' agent, at the time said loan was made or at any other time.

The question was asked, State what you know, if anything, in relation to yourself, R. L. Tomlin, & any of the officers or agents of the defendant bank confederating and conspiring together to destroy the plaintiffs' security on any of said lands at any time. State fully your knowledge, if any, in relation to this matter.

(Objected to as leading and as eliciting conclusions of law instead of proof of facts.)

I know of no such attempts and have no knowledge of anything of the kind.

The Daviess County Savings Association is, and was on the 30th day of June, 1879, located in Gallatin, Daviess County, Missouri, and doing business there. The loan from Geo. W. Frank & Darrow was closed up at Kingston, in Caldwell County, Missouri. The deed of trust to secure this loan of $10,000 of Frank & Darrow was executed at my house in Caldwell County; the notes were signed at Kingston—the first note being signed at my house, but being defective was destroyed, and another signed at Kingston on the same day in lieu of it. Lew E. Darrow, of Corning, Iowa, R. L. Tomlin, of Gallatin, Mo., were present when said papers were prepared at my house, and they were present when said papers were executed at Kingston as before stated. Samuel Russel, of Kingston, Mo., was also present at Kingston; did not pay much attention to course of business, but entered satisfaction of judgment in favor of the Exchange Bank of
417 Breckenridge, Mo., as its president; Winfield Miller, of Kingston, satisfied judgment in favor of Thomas Ryan—Darrow requiring all of this to be done before any money was paid over. Miller did not pay any attention to business transacted other than to satisfy record of Ryan judgment on receipt of check for amount of said judgment from Darrow. I do not know who were the directors of the defendant bank in 1879. I only know that Mr. Tomlin, cashier, told me that James Hemry was president. I never had any conversation with Mr. Hemry in regard to making this loan before the making of the loan. I never had any conversation with reference to this loan with any one connected with the bank, except Mr. Tomlin, prior to the time it was made. I am on intimate terms with Mr. Tomlin, and have been for a number of years.

The question was asked, Who acted as agents for the plaintiffs in making the loan to you of $10,000.00?

Answer. Lew E. Darrow, of the firm of Frank & Darrow. I agreed to pay Frank & Darrow $1,000.00 as commission for making the loan of $10,000.00 to me. I executed my notes to them for that amount and se-

cured them by deed of trust, second lien only to the lien of plaintiffs on same land included in plaintiffs' deed of trust, which included the improvements, and was on 1,080 acres of said land.

The deed of trust to plaintiff and the deed of trust to Geo. W. Frank & Darrow were both upon 1,080 acres of the 1,240 acres owned by me and before referred to.

I paid the first installment of interest on the $10,000 loan of plaintiffs on or about January 1st, 1880.

The question was asked, State who was concerned in *in* the payment of this interest who was connected with the bank, if any one.

Answer. Mr. Tomlin sent the interest in on my request, and it
418 was afterwards charged to me in my settlement with the bank. I sent the notice I had received from Frank & Darrow to Mr. Tomlin and requested him to pay the interest, which he did as above. Neither Mr. Hemry or any other officer of the bank knew anything of this payment of interest except Mr. Tomlin.

Cross-examination by plaintiffs' counsel:

The pl'ffs' deed of trust covered 1,080 acres of my land. On June 30, 1879, I owed the Daviess County Savings Association about $36 or $37,000.00. This was about the time the loan was made. The deed of trust to James D. Powers is prior to all liens except the Barnum deed of trust. The Barnum deed was owned by the Daviess County Savings Association. Mrs. Barnum was insisting upon the payment of the interest, and I told her that the bank above mentioned would pay her off. She went to the bank and the bank purchased her debt. This was long before the loan made by Frank & Darrow.

It was at the instance of Mr. Tomlin that I applied to plaintiffs for a loan of $10,000.00. As a reason for advising me to get this loan Mr. Tomlin said that Daviess County, one of the bank depositors, had called on the bank at short notice for their deposit. He said the bank wanted the money to pay that deposit. I asked Mr. Tomlin why he did not call on Mr. McFerran for the money. He said he did not like to call on the Colonel because he grumbles at letting the bank have money. Mr. Tomlin had been cashier of the bank several years prior to this time. I think about the year 1869 or '70 he first occupied that position. I don't know of any person having charge of the monied affairs of the bank from '69 to '79 but Mr. Tomlin, & Clingan & W. L. Brosius part of the time. The last two parties I don't know what position they occupied; suppose they were clerks. I had frequent transactions with the bank during that time
and done business principally with Mr. Tomlin. I did not know
419 during that time who the directors of the bank were. There was no motive for the payment of the Power debt. Power had written to me that he had reduced the rate of interest from 10 to 8 per cent., and if money got cheaper he would still reduce it lower. He was not urging me to pay the debt. Mr. Tomlin was present at Kingston when the two judgments above mentioned were satisfied. Lew E. Darrow gave 1 check to Miller to pay the Ryan debt, and gave the other to Russel. It was agreed between Mr. Tomlin, Mr. Darrow, & myself that these judgments should be paid off. Mr. Tomlin was present and consented to the payment of said judgments.

I don't think there was any agreement that the bank should protect

this loan by paying the interest. I did not get a nickel out of the money of this $10,000 loan. I don't know where the money went except what was paid on the judgments above mentioned.

Question. Was this loan made for your accommodation or for the benefit of the Daviess County Savings Association?

(Objected to as leading and asking the witness's conclusion and opinion as to the legal proposition as to whose benefit the loan enured to.)

Answer. It was certainly not made for my benefit, but was a detriment to me. These judgments were satisfied at the instance of Mr. Darrow; myself, & Mr. Tomlin were all present. Darrow would not pay the money until they were satisfied. It was agreed between myself and Mr. Tomlin & Mr. Darrow that Geo. W. Frank & Darrow were to have $1,000.00 for procuring the loan, payable in installment every six months. At the time Mr. Tomlin sent off the interest at my request I did not have any money in the bank subject to my check. In fact I had none at all then. I leased the property covered by deed of trust of bank by written lease. The Daviess County Sav. Association were about to sell
420 land under deeds of trust that had been by R. L. Tomlin as cashier entered satisfied; and it was necessary for me to lease land in order to get the use of it. The bank had advertised the lands for sale under its said original deeds of trust that had been entered satisfied by Mr. Tomlin, cashier. The bank, through its attorney, Mr. Holliday, applied to me for possession of the land. I then applied for a lease of the land, and leased it for two years, agreeing to pay the bank $2,000.00 rent for the two years.

Re-examined by def'ts' counsel:

I gave my note for and secured the loan made by pl'ff to me by deed of trust on my land, and part of the money I know was applied in pay't of part of my debts. I left the matter to Mr. Darrow & Mr. Tomlin to complete. I have stated that the loan was a detriment to me, because I was getting the money from Power at 8 per cent., and he had agreed to take less if the rate of interest came down in the country; this was the only reason why it was a detriment, as the other debts paid were bearing 10 per cent.; that is, the Ryan and Exchange Bank of Breckenridge judgments; the payment of these debts was no detriment to me. The rent under the lease was $1,000.00 per year, payable annually. I have paid nothing as rent yet under the lease.

Recross-examination:

The date of the lease is April 15th, 1880. It commenced to run at that time and runs two years from that time; the rents and profits of the place would be worth about $1,000 per year.

PATRICK S. KENNEY.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid, this 14th day of May, A. D. 1881.

[SEAL.] BOYD DUDLEY,
421 *Notary Public, Daviess Co., Mo.*

JAMES HEMRY, of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth and saith:

My name is James Hemry. I am 62 years of age. I am a banker by occupation, and I reside in Caldwell County, Missouri.

In 1879 I held the position of president and director in the Daviess County Savings Association, in Gallatin, Daviess County. I first held the position of director in said bank in '72 or '73, and have occupied that position at all times since then. The first I knew of the loan from pl'ffs to Kenney was some time in February, 1880. I refer to the loan of $10,000.00. I had not been consulted by Kenney, Darrow, ag't of pl'ff, or Tomlin about the $1,000 loan at the time it was made, or prior or since that; have talked with Tomlin long since the loan was made, but *was* never been consulted about the propriety of making said loan. I did not learn anything in relation to the transaction until Feb'y, 1880, and then it was not through Kenney, Darrow, or Tomlin, but through Mr. Holliday, of Hamilton, Mo. The directors of the bank in 1879 were Judge John A. Tuggle, R. L. Tomlin, and myself. The organization of the bank has been kept up continuously since I was first made a director in 1872 to the present time. I was in and about the bank an average of from one to three days a week in 1879, except one month that *that* I was absent—August. I was elected president of the bank on the 1st of January, 1879. James McFerran had been president the year before I came in, and was president until I was elected.

The question was then asked, What arrangement, if any, as to the business of the bank and conducting it was made when you came in as president?

422 (Obj. to on the ground that it is irrelevant and immaterial, record evidence being the best evidence, and pl'ff having no knowledge of the arrangement.)

Answer. The arrangements were that Mr. Tomlin, cashier, was to make his reports or statements semi-monthly to Col. McFerran and myself. (McFerran was by correspondence to help to direct and superintend the affairs and business of the bank.) I was to assist, as well as I could, not being an expert in the business. I was to give what attention and assistance I could here. The reports to Col. McFerran were to be made at Colorado Springs. Mr. Tomlin was present and consented to this arrangement.

Question. What was done under that arrangement by yourself?

(Obj. to for the reasons above stated in last objection.)

Answer. I called in the bank about as often as above stated and consulted and advised in relation to any business that was on hands of the bank's. I consulted with Tomlin, cashier; and on matters of importance that would arise that came to my knowledge I would advise him to write to Col. McFerran for instructions before taking action.

Question. If you know whether or not Tomlin corresponded with Col. McFerran on business of the bank's?

(Obj. to as leading, on the ground that the correspondence is the best evidence.)

Answer. He did; I have seen him writing letters to Col. McFerran on business of the bank; at least he so stated to me at the time. I never read the letters or any of them, though I think Tomlin has read some of the letters about the business of the bank to me.

Question. State what you know, if anything, in relation to Tomlin, as cashier, receiving letters from Col. McFerran from Colorado Springs.

(Obj. to as immaterial, irrelevant, & incompetent.)

423 Answer. I know of his receiving letters in relation to the business of the bank frequently, and have read some of them myself.

Question. State what you know, if anything, of Tomlin, as cashier, reporting the condition of the business of the bank to Col. McFerran at Colorado Springs.

(Obj. to as irrelevant and immaterial.)

Answer. I know that he was making reports, as I understood, regularly twice a month.

Question. State whether or not he made any reports to you.

(Obj. to as leading and immaterial.)

Answer. He did.

Question. State whether or not Tomlin, as cashier, was authorized by you or the other directors, to your knowledge, to exercise any power or authority over the business affairs of the bank other than he was authorized to exercise by virtue of his office of cashier.

(Obj. to as irrelevant, and as seeking the opinion of the witness as to a question of law.)

Answer. We never delegated any power to him or gave him any authority to do anything only by virtue of his office; he was never authorized to release securities or make contracts; the bank made him cashier, and never gave him any authority except such as was conferred by the office upon him.

Question. State whether or not you or the board of directors of the bank ever ratified or acquiesced in the transaction made by Tomlin, Kenney, and Darrow, as agent of the plaintiffs, in relation to the loan by plaintiffs to Kinney of $10,000.00, or in the attempted release of the bank's original deeds of trust or satisfaction of its original indebtedness attempted to be made by said Tomlin.

424 (Obj. to as incompetent.)

Neither the president or board of directors of the bank ever ratified or acquiesced in said transaction; on the contrary, the bank has rejected it, and determined so to do upon the first meeting of the board of directors after it first came to their knowledge, which did not exceed a week or ten days after it had come to the knowledge of the individual directors, stockholders.

Cross-examined by pl'ffs' counsel:

Question. You state in your examination-in-chief that you have been director of the defendant bank since 1873; you may now state whether or not the directors from the time you first became a director until the rejection of the deed of trust of the plaintiff—the directors ever passed upon any loans in favor of the bank or directed the satisfaction of any deed of trust in its favor, or in relation to the taking or releasing any of its securities; if so, state what that action was.

(Obj. to as irrelevant and incompetent.)

Answer. I don't know that any such matters were ever considered in the bank.

Question. You may now state if it has not been the custom of the bank since Mr. Tomlin has been cashier up to the time of the rejection of the deed of trust aforesaid for him to pass upon the sufficiency of all loans due the bank and to release all securities held by the bank when consulted and paid off.

Answer. The board of directors have never made any rules and regulations in relation to the cancellation of securities or approval of loans, to my knowledge. I thought the law did regulate the duties of officers of the bank. I don't know whether Tomlin released securities or not, or passed upon the sufficiency of them exclusively, since I was *elec*
425 elected president of the bank on June first, 1879.

Question. From 1873, when Col. McFerran removed to Colorado, to the year 1879, when you were elected president of the bank, I will get you to state if Mr. Tomlin did not pass upon all securities in favor of the bank. If he did not, who did?

Answer. I don't know. I know that McFerran had the chief control and management of the bank, and giving the bank attention and direction during that time, and I was relying on him.

Question. You may now state instances, if any you remember, when Col. McFerran passed upon the sufficiency of securities in favor of the bank, or released and cancelled securities paid to the bank, from '73 to Jan'y, '79.

Answer. I was not present at the taking of securities or releasing of securities at any time during the years mentioned that I now remember.

Question. Was it not your duty, as a director of the association, to look after the taking and satisfaction of deeds of trust in favor of the bank? And, if so, state the reasons why you did not do it.

(Obj. to by def't as asking the witnesse's opinion of a matter of law, and as neither proving nor tending to prove any issue in the cause. And further objected to as irrelevant and immaterial.)

I did not know at that time that it was my duty. I was ignorant of the duties of a director, and also I trusted to the management of the president, James McFerran.

Question. You may now state whether or not, prior to the rejection of the plaintiffs' deed of trust, the directors of the association were ever called *called* together for the purpose of directing the management or control of
426 the affairs of the bank, or for the purpose of passing upon the sufficiency of the securities or releasing cancelled liabilities due the bank; if so, state when that meeting was.

Answer. I think the directors were called together several times to direct the business of the bank; I cannot state what business was transacted, only that it was general business of the bank, nor can I state the number of times or particular occasion of any one of them.

Question. Did you or do you know of any other of the directors, prior to the time you were made president, directing, or assuming to direct, the taking and releasing of securities to the bank?

Answer. I did not myself, as director, nor do I know of any other individual directors directing as to the releasing of securities; I have advised and directed myself about the taking of securities to be very particular; I don't think of any particular case in which I directed or advised.

Question. You speak of an arrangement made between yourself, Mr. McFerran, and Mr. Tomlin, about semi-monthly statements as to the condition of the bank; you may now state if there was any record made of this arrangement; if not, what notice of such arrangement was given to the public.

Answer. I don't know whether any record was made of the arrangement or not, & no notice of it was given to the public.

Question. Who was the first to advise the rejection of this deed of trust?

Answer. I think it was Col. McFerran; the directors were all together, and they were unanimous.

Re-examined by def'ts' counsel:

I know of no necessity of calling the board of directors together,
427 prior to 1879, to consider the loans or discounts of the bank, and the securities for the same, or the releasing of the securities. There was no difficulty arising in such matters during the time I was director, from '73 to '79. While McFerran was president the business proceeded smoothly and without trouble. Since I have been director the organization has been kept up regularly and the officers elected annually. As director I discharged such duties to the bank as I thought were necessary for the interest of the bank.

The first full examination of the discounts of the bank we made in June or July, 1879. We made an examination of all the discounts and indebtedness of the bank of all kinds. I had knowledge of the most prominent debts due the bank prior to the time I was elected president in '79, and the manner in which some of them were secured.

JAMES HEMRY.

Subscribed and sworn to before me, on the day, at the place, and within the hours first aforesaid.

[SEAL.] BOYD DUDLEY,
Notary Public, Daviess Co., Mo.

Notar*ie*'s fees for taking these depositions, $9.10; paid by defendant.

I, Boyd Dudley, a notary public within and for the county of Daviess, in the State of Missouri, do certify that in pursuance of the annexed agreement in writing came before me, at my office, in the city of Gallatin, in the county of Daviess and State of Missouri, Patrick Kinney and James Hemry, who were by me severally sworn to testify the whole truth of the matter in controversy aforesaid; that*t* they were examined and their examination reduced to writing and subscribed by them respectively in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and their said depositions are herewith returned.

428 I further certify that the said Patrick Kenney and James Hemry are both residents of the county of Caldwell, in the State of Missouri.

Given at my office, in the city of Gallatin, in the county of Daviess & State of Missouri, this 14th day of May, 1881.

[SEAL.] BOYD DUDLEY,
Notary Public, Daviess County, Missouri.

Notary's fees for taking these depositions, $9.10; paid by defendant.

429 UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:

The President of the United States of America to W. D. Miner, notary public at Corning, Adams County, Iowa, greeting:

Know ye that in confidence of your prudence and fidelity we do, by

these presents, authorize you to cause to come before you Lew E. Darrow, to be examined as a witness in a cause pending in our circuit court of the United States for the western division of the western district of Missouri, wherein Albert S. Webb et al. are plaintiffs and Daviess Co. Savings Association et al. are defendants, at such time and place as shall be named to you for that purpose by the said plaintiffs or their attorneys or agents.

And we do command you to examine the said witness, under oath or solemn affirmation first taken before you, upon the interrogatories and cross-interrogatories hereto annexed, touching his knowledge of anything relating to the said matter in controversy between the said parties, and reduce such examination to writing; and when you shall have so taken such examination you are to cause the witness to sign the same, and to such examination at the foot thereof you are to append your certificate, setting forth the facts that said examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness if known to you. Should any paper or exhibit be produced or proven, or referred to by witness, you are to describe the same in the examination or cause it to be so marked as to establish its identity, and attach the same to such examination. And you will return the same and all exhibits produced to you annexed hereto, carefully closed up and under your seal,
430 with the names of said parties litigant thereon, directed to the clerk of the circuit court of the United States in and for the western division of the western district of Missouri, at Kansas City, Mo., with all convenient speed.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, the 18th day of June, A. D. eighteen hundred and eighty-one. Issued at office, in the city of Kansas, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] H. C. GEISBERG,
Clerk of said Circuit Court.,
By WARREN WATSON, *D. C.*

ALBERT S. WEBB ET AL.
vs.
ALPHONSO L. MARTIN ET AL.

The officer taking this deposition will propound the following questions to the witness, Lew E. Darrow, on the part of the plaintiff:

Int. 1st. What is your name, age, place of residence, and occupation?

Int. 2nd. If you are acquainted with the parties to this action state how long you have been acquainted with each, in what State each resides, and what State each is a citizen of, how long they have resided in such, and how long they have been a citizen of the same; state fully.

Int. 3rd. Are you acquainted with R. L. Tomlin, of Gallatin, Missouri? If so, state how long you have known him, how you became acquainted with him, what business he has been following during that acquaintance; state fully.

Int. 4th. Do you know anything about the plaintiffs in this action making a loan about July 1st, 1879, to Patrick S. Kenney, of Missouri,
431 of near ten thousand dollars, and taking therefor a bond and a deed

of trust as security for the same? If you answer that you do, will you now state where the original papers are evidencing said loan; and if you have the possession and control of them will you hand each to the officer taking this deposition in order that they may be attached to your depositions as exhibits, or if you cannot allow them to be attached then give your reasons and hand the originals to the officer in order that he may copy them and attach certified copies; and will you please be particular to state whether or not these copies are true copies or not? Make your answer full and explicit.

Int. 5. Did you take any part in negotiating said loan in behalf of either of the parties? And, if so, state for whom you were acting, and fully what part you took.

Int. 6. You may now begin at the commencement of said transaction and state fully and particularly all that occurred, including all negotiations between the plaintiff and Patrick S. Kenney, if any, and be particular in stating what part the Daviess County Savings Association, of Gallatin, Mo., and its officers took in said negotiation, if any; give the correspondence that passed between any of the parties.

Int. 7. What liens, if any, were represented to you to be upon the lands, and what was to be done with them? State fully.

Int. 8. Upon whom did you depend and upon whose representations did you act, and who, if any one, influenced your actions, and to what extent? State fully.

Int. 9. Now state fully what amount of money was loaned by the plaintiffs, if any, and how was it applied and under whose direction it was applied, if any one's.

Int. 10. What was done, if anything, toward cancelling the deeds of trust that were already on the land, and cancelling them of record?

432 Int. 11. If any of the deeds of trust and the indebtedness that was secured thereby were taken up by you describe the same; and if you have the original papers attach the same hereto, and make them parts of your deposition.

Int. 12. What, if anything, was done by the defendant, the Daviess County Savings Association, toward paying the interest on the Kenney loan? State fully.

Int. 13. Did you believe or not that all of the indebtedness of Kenney that was thus paid off was an *in*questionable lien upon his lands; and, if so, who, if any one in particular, led you to so believe? State fully.

Int. 14. When and how did you first learn that the Daviess County Savings Association questioned the mortgage of the plaintiffs? State fully.

Int. 15. What knowledge, if any, did the plaintiffs have of any of the facts constituting this entire transaction, and who did they get their information from?

Int. 16. What information, if any, did you give them concerning the loan?

Int. 17. State what, if anything, you did as soon as you heard that the plaintiffs' mortgage was questioned; state fully all that occurred.

Int. 18. At the time all the negotiations referred to in reference to the loan aforesaid to Kenney who was in the active management of the affairs of the business of the Daviess County Savings Association, and who attended to all its business of the various kinds that presented itself?

Int. 19. State fully all you may know about the Daviess County Savings Association attempting to sell under these old deeds of trust; state fully.

Int. 20. State any other fact of which you have knowledge that may be beneficial to either party.

UNITED STATES OF AMERICA,

433 *Western Division of the Western District of Missouri, set:*

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said division and district, do hereby certify that the foregoing is a true copy of the interrogatories in the case therein named as fully as the same remain on file in my office.

Witness my hand as clerk and the seal of said court. Done at office, in the city of Kansas, this 17th day of May, A. D. 1881.

[SEAL.] H. C. GEISBERG, *Clerk*,
By WARREN WATSON,
Deputy Clerk.

In the United States circuit court, western division of the western district of the State of Missouri, at Kansas City, Mo.

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, dec'd, plaintiffs,
against
ALPHONSO L. MARTIN, SHERIFF, & WM. W. Clevenger, sheriff, & *and* the Daviess County Savings Association, of Gallatin, Mo., defendants.
} No. 337.

The defendants pray the court to make an order requiring the officer commissioned to take the deposition of witness Lew E. Darrow, sworn and examined on behalf of plaintiffs, to propound the following questions, by way of cross-interrogatories, to said witness Lew E. Darrow for and on behalf of defendants, to wit:

Cross-int. 1st. Where is the defendant The Daviess County Savings Association located, and where was its place of business in the year 1879?

Int. 2nd. Were you ever at the place of business of the Daviess County Savings Association, or did you ever see or converse with any of its officers other than Robert L. Tomlin, its cashier, at or before the time
434 when you made the loan, as agent for plaintiffs, to one Patrick S. Kenney on or about the 30th day of June, 1879?

Int. 3rd. State at what place said loan was made, and the bonds and deeds of trust executed to secure same, and who was present when the same was made and executed by said P. S. Kenney.

Int. 4. State whether or not any other officer of the Daviess County Savings Association besides R. L. Tomlin, cashier, took any part whatever in the negotiation resulting in said loan, or had any knowledge whatever of the transaction at the time or before the loan was made by you to Kinney.

Int. 5. Who made representations to you about the liens upon Kenney's lands held and owned by the Daviess County Savings Association?

Int. 6th. State whether or not the entire amount of money loaned by plaintiffs to Kinney was or was not applied to P. S. Kinney's indebtedness. And if not, who got any portion of it other than his creditors, and how much. State fully.

Int. 7th. Who undertook to cancel the defendant bank's deeds of trust already on said P. S. Kenney's lands, and when and where did said pretended cancellation take place?

Int. 8th. If any deed of trust on Kinney's land was paid and satisfied by you, describe the land by numbers, United States s'y, conveyed by such trust-deed.

Int. 9th. If at any time any interest was paid on the loan to P. S. Kinney through the defendant bank, state by what officer of the Daviess County Savings Association such interest was paid, also the time when the same was paid, and on whose account the same was paid, and who was credited with payment of same by your plaintiffs, or either of you; and also state whether or not any other officer of said corporation had any knowledge or information of such payment.

435 Int. 10th. Did you investigate beforehand the liens on P. S. Kinney's lands which you claim to have paid off out of the money loaned to P. S. Kinney in order to ascertain what particular lands were encumbered by such liens, and their extent, and the amount secured thereby, and in order to ascertain whether or not such debts, or any part of them, were not in fact liens on any part of said Kinney's lands?

Int. 11th. How did you know who was in the active management of the affairs and business of the Daviess County Savings Association prior to or at the time of making the negotiations concerning the loan to Kenney? Was you at the bank, or did you ever make any inquiry of the president or directors or any one interested in said bank as to who was in the active management of the affairs and business of said bank, and who attended to all its business of various kinds? Did you before or at that time ever investigate the business and affairs of the bank for the purpose of ascertaining who, if any officer of the bank, attended to all the business of the bank of its various kinds, or for any other purpose? State whether you ever examined the records of the bank or the records of any court or other records of Daviess County, Missouri, to see who attended to all of the business of the bank of various kinds prior to that time.

Int. 12th. Is it not true that you never made any investigation or inquiry at or before the loan to Kinney into the business of the bank, or who it was done by, except such as you made of R. L. Tomlin, cashier?

Int. 13th. State whether or not you relied wholly on the declarations of R. L. Tomlin, cashier, as to the extent of his authority to make the negotiations and contract set up by plaintiffs in this case, and whether or not you looked or investigated any further. If you made any other or

436 further investigations, state fully who you inquired of as to the extent of the cashier's authority to make contracts for the bank and what other investigations you made.

Int. 14. State what commissions you were to receive for negotiating said loan from plaintiffs to Kinney, and who paid or agreed to pay you for such services. What was the aggregate amount of your commission; and,

if not paid, how was it secured to you? If on Kenney's land, describe the same by numbers by United States survey; and if you have the original papers securing said commission please attach them hereto, both the bonds and deed of trust, if such were made, and make them a part of this your deposition.

Int. 15th. Was the deed of trust executed by Kinney and wife to plaintiff to secure the loan to Kinney made a first lien on Kinney's lands described therein, and was the deed of trust executed to you to secure your commissions for making the loan made a lien on all the lands described in the deed of trust to plaintiff, and was the same second, junior, and inferior only to plaintiffs' said lien thereon?

Int. 16th. State the value of P. S. Kenney's lands described in plaintiffs' trust deed, stripped of all improvement, and state what is the value of said improvements.

Int. 17th. State upon what quarter section of said land, by U. S. survey, the house and adjacent buildings are situated, and state the value of said house and adjacent buildings.

JAS. H. B. McFERRAN AND
J. A. HOLLIDAY,
Att'ys for Defendants.

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said division and district, do hereby certify that the foregoing writing is a true copy of the cross-interrogatories in cause therein
437 named as fully as the same remain on file in my office.

Witness my hand as clerk and the seal of said court. Done at office, in the city of Kansas, this 17 day of May, A. D. 1881.

[SEAL.] H. C. GEISBERG, *Clerk*,
By WARREN WATSON,
Deputy Clerk.

438 A. S. WEBB ET AL., PL'FFS,
vs.
DAVIESS CO. SAVINGS ASS'N ET AL., D'F'TS.

Interrogatories propounded to Lew E. Darrow, a witness for the defense.

Interrogatory 1. What is your name, age, place of residence, and occupation?

Ans. Lew E. Darrow; age, 37 years; place of residence, Corning, Iowa; occupation, banker.

2. If you are acquainted with the parties to this action state how long you have been acquainted with each, in what State each resides, and what State each is a citizen of, how long they have resided in such, and how long they have been a citizen of the same; state fully.

Ans. I am acquainted through business relations with the plaintiffs and defendants, and through such relations know the plaintiffs to be residents and citizens of New York, and the defendants to be residents and citizens of the State of Missouri.

3. Are you acquainted with R. L. Tomlin, of Gallatin, Missouri. And,

if so, state how long you have known him, how you became acquainted with him, what business he has been following during that acquaintance; state fully.

Ans. I am acquainted with R. L. Tomlin, of Gallatin, Missouri; have known him since 1875 or 1876; became acquainted with him by meeting him at his bank—the Daviess County Savings Association, at Gallatin, Mo. He was in charge of that bank when I became acquainted with him, and continued in charge up to and after the time of the commencement of this suit. I frequently visited Gallatin on business, and usually met Mr. Tomlin in his bank. He had the sole charge and general manage-

439 ment of the Daviess Co. Savings Association.

4. Do you know anything about the plaintiffs in this action making a loan, about July 1st, 1879, to Patrick S. Kenney, of Missouri, of near ten thousand dollars, and taking therefor a bond and a deed of trust as security for the same? If you answer that you do will you now state where the original papers are evidencing said loan, and if you have the possession and control of them will you hand each to the officer taking this deposition, in order that they may be attached to your depositions as exhibits; or if you cannot allow them to be attached, then give your reasons and hand the originals to the officer in order that he may copy them and attach certified copies; and will you please be particular to state whether or not these copies are true copies or not? Make your answer full and explicit.

Ans. I know that during the months of July and August, 1879, the plaintiffs made a loan of $10,000.00 to Patrick S. Kenney, taking therefor a bond and deed of trust as security for the same, and I hand the officer taking this deposition the bond of said Kenney to copy as Exhibit A, and also hand him the deed of trust to copy as Exhibit B. These papers having been made a part of the papers in this suit I don't feel at liberty to have them attached as part of my deposition, but am willing copies of them should be made, to be certified to by the notary and made a part of my answer. The copies hereto attached are true copies of the original papers.

5. Did you take any part in negotiating said loan in behalf of either of the parties. And, if so, state for whom you were acting and, fully, what part you took.

Ans. I did take part in negotiating said loan in behalf of Patrick S. Kenney.

440 6. You may now begin at the commencement of said transaction and state fully and particularly all negotiations between the plaintiff and Patrick S. Kenney, if any, and be particular in stating what part the Daviess County Savings Association, of Gallatin, Missouri, and its officers took in said negotiation, if any. Give the correspondence that passed between any of the parties.

Ans. Several years ago, probably in 1877 or 1878, I was informed by Mr. Tomlin, cashier of the Daviess County Savings Association, who managed the business of that bank, that Mr. Kenney was largely indebted to that bank, and that it would be desirable both to the bank and Mr. Kenney if Mr. Kenney could obtain a loan on his property of sufficient size to pay the bank the amount he owed it. I enquired the amount of his indebtedness to the bank, and learned that it probably exceeded

$20,000.00. In the conversation I stated that this was a large' amount than our firm could loan upon the land. On the third of July, 1879, our firm received a letter from Gillihan and Brosius, of Gallatin, Mo.—which I hand to the notary for the purpose of making a copy, marked "Exhibit C." This letter enclosed an application from Patrick S. Kenney for a loan of $12,000.00 on his farm. I also hand the notary another letter received from Gillihan & Brosius referring to the same matter to copy, marked as "Exhibit D." We submitted a copy of the application to the plaintiffs in this case, who consented to make a loan upon it, if after a personal examination by me the security was approved and the title was shown to be good and the deed of trust securing the debt to be a first lien on the land. I then notified Gillihan and Brosius that I would be at Mr. Kenney's place on a certain day to examine the farm and to close
441 the loan, and requested one of them to meet me there. On arriving at Kidder I met Mr. Brosius an' also Mr. Tomlin, cashier of the Daviess County Savings Association, and we then went up to Mr. Kenney's farm, looked it all over carefully, and then looked over the abstract and examined that carefully. I found that a portion of the land did not have good record title, and I told Mr. Kenney and the other gentlemen with me that I could not make the loan of $12,000.00 without the title to this part of the land could be made good. Mr. Kenney stated that he thought he could find the missing deeds or get them and have them placed on record. We left Mr. Kenney's place with the understanding that he was to do this, and when he had the deeds all ready I was to go down again and close the transaction. This was the state of the matter when I received a telegram from Mr. Tomlin, cashier of the Daviess County Savings Association, which I hand to the notary to copy and mark "Exhibit E." In a day or two I received a letter from Mr. Tomlin, which I hand to the notary to copy and mark "Exhibit F." To this letter I made reply, and hand the notary a copy of this reply to mark "Exhibit G." In due course of mail came a letter from Mr. Tomlin, which I hand to the notary to copy and mark "Exhibit H." To this letter a reply was made, a copy of which I hand to the notary marked "Exhibit I." In response to this came another letter from Mr. Tomlin, cashier of the Daviess County Savings Association, which I hand to the notary to copy and mark "Exhibit J," and the reply to this letter is shown by Exhibit K, which is a copy of the letter replying, and another letter written Mr. Tomlin, cashier of the Daviess County Savings Association, a copy of which is marked "Exhibit L." It will be seen from these letters that the loan was to be reduced from $12,000 to $10,000, and that portion
442 of the land which did not have good title was left out. By appointment on the 6th of August, 1879, I met Mr. Kenney and Mr. Tomlin at Hamilton, Mo., and we three went to Kingston, Mo., the county seat, to close the loan. Mr. Kenney had executed the papers that morning before leaving home, his wife joining him in the deed of trust. We went to the circuit clerk—Mr. Tomlin, Mr. Kenney, and myself—and filed for record the deed of trust of Kenney to the plaintiffs, and then the deed of trust to our firm. After these were filed Mr. Tomlin filed his deed of trust which Kenney had given to the Daviess County Savings Association for about 35 or 36 thousand dollars, which Mr. Tomlin said represented the entire indebtedness of Mr. Kenney to his bank, including all the liens

against Kenney. Then Mr. Tomlin, as cashier of the Daviess County Savings Association, released of record all the deeds of trust which were held by the Daviess County Savings Association, which were as follows:

A trust-deed to M. A. Low, trustee for Leslie P. Barnum, recorded in book G, page 84.

A trust-deed to C. S. McLaughlin, trustee for Solomon Musser, recorded in book K, page 3.

A trust-deed to John Doolin, for Nicholas Quirk, recorded in book K, page 15.

A trust-deed to Robt. L. Tomlin, trustee for the Daviess County Savings Association, recorded in book K, page 67.

Another trust-deed to Robt. L. Tomlin, trustee for the Daviess County Savings Association, recorded in book K, page 74.

Another trust-deed to Robt. L. Tomlin, trustee for the Daviess County Savings Association, recorded in book K, page 161.

And another trust-deed to William C. Gillihan and Sam'l T. Brosius, trustees for the Daviess County Savings Association, recorded in book K, page 212.

443 All of these deeds of trust Mr. Tomlin told me were the property of the Daviess County Savings Association and that he had full authority and right to cancel the same of record. After these were cancelled I paid the clerk of the court $1,689.86 which was the amount due on three judgments which were liens against Kenney and were shown to be liens by the abstract furnished me by Mr. Kenney and Mr. Tomlin. At the same time I paid Mr. Tomlin as cashier of the Daviess County Savings Association $3,000.00 by draft on New York to apply on payment of the $10,000.00 loan, and it was talked that this was to be applied by Tomlin on the indebtedness of Kenney to the bank. There still remained unpaid one deed of trust which was given to Thomas Culligan, trustee for James D. Power, $5,000.00 which Mr. Tomlin wished me to retain the money for and pay off to Mr. Culligan for Mr. Power, as I passed through St. Joseph on my way home. I could not find Mr. Power and it was some time before I could get trace of him to pay the amount due on his deed of trust, which was $5,200. This amount, however, was paid on the 26th of September, which paid in full the deed of trust which was held by James D. Power. I hand the notary copy of the letter written to R. L. Tomlin, cashier, on the 9th of August, 1879, on my return home from Kingston, Mo., which gives a statement of the entire transaction. This is marked "Exhibit M."

7. What liens, if any, were represented to you to be upon the lands and what was to be done with them? State fully.

Ans. My answer to No. 6 gives a list of the liens upon the lands. They were all to be paid off and cancelled, and those held by the Daviess County Savings Association were to be made junior and inferior to the deed of trust given to secure the plaintiffs and the second deed of

444 trust given to secure $1,000.00 in notes to Geo. W. Frank & Darrow. This was fully understood and agreed to by Tomlin, Kenney, and myself, and was the only condition on which plaintiffs would make the loan.

8. Upon whom did you depend and upon whose representations did you act, and who, if any one, influenced your actions, and to what extent? State fully.

Ans. I depended upon the abstract of title that showed the liens, including the judgments, and also the representations made by Mr. Tomlin and Mr. Kenney in regard to the relations of Mr. Kenney and the Daviess County Savings Association.

9. Now state fully what amount of money was loaned by the plaintiffs, if any, and how it was applied, and under whose direction it was applied, if any one's.

Ans. The plaintiffs loaned the full amount of $10,000.00. They also paid $100 interest, as the loan was not made until the 6th of August, but for convenience the papers were dated on the 1st of July, and for this difference of one month and six days' interest they paid $100, making $10,100 they paid on the loan, every dollar of which was applied on the indebtedness of Mr. Kenney to the Daviess County Savings Association, to pay the judgments against Kenney, to pay the James D. Power deed of trust, etc. Mr. Kenney did not receive one cent of the money. It was applied under the direction of Mr. Tomlin.

10. What was done, if anything, toward cancelling the deeds of trust that were already on the land and cancelling them of record?

Ans. The deeds of trust which belonged to the Daviess County Savings Association were cancelled by Mr. Tomlin, as the manager and cashier of said bank, and the deed of trust held by James D. Power was
445 afterward released by his executing a formal release and our having it placed on record.

11. If any of said deeds of trust and the indebtedness that was secured thereby were taken up by you, describe the same, and if you have the original papers attach the same hereto and make them parts of your deposition.

Ans. The only deed of trust that we paid was the one securing the indebtedness to James D. Power. I have not the original paper in this deed of trust. It was for $5,000, and at the time it was paid interest was due on it from April 1st, 1879, at 8 per cent., $200, in all, $5,200, which was the amount we paid Thomas Culligan, trustee, on the 26th of Sept., 1879, who afterwards sent us the release executed by James D. Power. The payment of this Power debt of $5,200 was attended to by our firm for Mr. Tomlin, cashier, and at his request.

12. What, if anything, was done by the defendant, The Daviess County Savings Association, toward paying the interest on this Kenney loan? State fully.

Ans. The interest which became due Jan'y 1st, 1880, we received by draft of the Daviess County Savings Association, and I hand the notary letter transmitting the same to copy as part of my deposition, and mark "Exhibit N."

13. Did you believe or not that all of the indebtedness of Kenney that was thus paid off was an unquestionable lien upon his land; and *and*, if so, who, if any one in particular, led you to so believe?

Ans. I did believe that all indebtedness of Kenney that was paid off was an unquestionable lien upon his land, and was led to believe so from the abstract of title furnished me by said parties, from what he said, and from what was said by Mr. Tomlin.

14. When and how did you first learn that the Daviess County Savings Association questioned the mortgage of the plaintiffs? State fully.

446 Ans. My first knowledge of the Daviess County Savings Asso-

ciation claiming any title or right under their old deeds of trust, which Mr. Tomlin cancelled on the 6th of August, 1879, was notice that Mr. Kenney's land was advertised for sale under one of these deeds of trust. A copy of the notice of publication was sent our firm, but we were informed that the Daviess County Savings Association did not wish us to know of the sale; that they wanted to keep it a secret from us until after the sale was made. This was in the month of June, 1880.

15. What knowledge, if any, did the plaintiffs have of any of the facts constituting this entire transaction, and who did they get their information from?

Ans. The plaintiffs knew nothing about it, except such information as they got through me, and such as they received from the papers. They demanded that they should have the first lien on the land, and that all other liens should be removed for that purpose. They depended on and trusted me to see that the land was clear, and that their lien as a first lien should be unquestionable. I represented to them, as had been agreed by Mr. Kenney, Mr. Tomlin, and myself, that plaintiffs should have the first lien. I saw that Mr. Tomlin had entire control of the bank. He assured me that he had the right to cancel the deeds of trust, and from all that I could see and learn about the matter, I had no doubt of Mr. Tomlin's authority to cancel the deeds of trust and make the contract that he did. I reported to the plaintiffs that everything was all right, and they believing that it was, advanced their money. Had any one raised any question as to the authority of Tomlin, or had any circumstance or fact that came to my knowledge, indicated that there was any doubt as to his au-
447 thority I never would have closed the transaction and plaintiffs would never have made the loan.

16. What information did you give them, if any, concerning the loan?

Ans. I always informed them that the loan was all right in every particular.

17. State what, if anything, you did, as soon as you heard that the plaintiffs' mortgage was questioned; state fully all that occurred.

Ans. As soon as we received this notice we immediately took steps to have the sale stopped, and I went to Gallatin, Mo., to take measures to obtain an injunction restraining the acting sheriff from making the sale, and succeeded in obtaining the injunction.

18. At the time all the negotiations referred to in reference to the loan aforesaid to Kenney, who was in the active management of the affairs of the business of the Daviess County Savings Association, and who attended to all of its business of the various kinds that presented itself?

Ans. During all the negotiations about the loan Robt. L. Tomlin was in active management of the Daviess County Savings Association, and during all the time I knew of no one else who had a hand in managing the bank. In fact I never saw any other person or officer in the employ of the bank except a clerk, though I have been in the bank a dozen times at different periods in the last six years. He had as full and unlimited control of the bank to all appearances as if it was entirely his property.

19. State fully all you may know about the Daviess County Savings Association attempting to sell under these old deeds of trust; state fully.

448 Ans. At the time I visited Gallatin to obtain an injunction

restraining the bank from having the farm sold under the deed of trust, I had occasion to go to Kingston, and there found that the bank had advertised to sell under nearly all the old deeds of trust which it had had, and in one case the sale was to take place within two or three days from the time we asked for the injunction.

20. State any other fact of which you have knowledge that may be beneficial to either party.

Ans. I know of nothing further unless I state that when Mr. Tomlin cancelled of record the deeds of trust which the Daviess County Savings Association held he offered to turn over the notes and deeds of trust to me, but I told him that as they were cancelled and paid they properly belonged to Mr. Kenney, and that he should give them to him. He remarked that he would do so the first time Kenney came to Gallatin, when they would settle up and he would make all the indorsements on the large mortgage of $35,000 or $36,000 which had been placed on record, and which covered all he owed the bank.

In the United States circuit court, western division, western district of Missouri.

ALBERT S. WEBB ET AL., PL'FFS,
vs.
DAVIESS CO. SAVINGS ASS'N ET AL., DEF'TS. } No. 337.

Cross-interrogatories propounded to witness Lew E. Darrow, on the part of the defense.

Cross-interrog. 1. Where is the defendant *the defendant* The Daviess County Savings Association located, and where was its place of business in the year 1879?

Ans. Gallatin, Mo.

449 2. Were you ever at the place of business of the Daviess County Savings Association, or did you ever see or converse with any of its officers other than Robt. L. Tomlin, its cashier, at or before the time when you made the loan, as agent for plaintiffs, to one Patrick S. Kenney on or about the 30th day of June, 1879?

Ans. I have been at the place of business of the Daviess County Savings Association probably a dozen times, but never saw any other officer around there than Robt. L. Tomlin, its cashier, either before or since the time that this loan was made.

3. State at what place said loan was made and the bonds and deeds of trust executed to secure same, and who was present when the same was made and executed by said P. S. Kenney.

Ans. The bonds and deeds of trust were written in our banking-house, at Corning, Iowa. They were sent to Robt. L. Tomlin, cashier of the Daviess County Savings Association, to have them executed by Patrick S. Kenney and his wife. I was not present when they were signed and executed. Upon their face they appear to have been executed at Kidder, Mo., on the 6th of August, 1879. Deed of trust was acknowledged before A. W. Rice, notary public for Caldwell County, Mo.

4. State whether or not any other officer of the Daviess County Savings Association besides R. L. Tomlin, cashier, took any part whatever in the

negotiation resulting in said loan or had any knowledge whatever of the transaction at the time or before the loan was made by you to Kinney.

Ans. I do not know whether any other officer than the cashier of the Daviess County Savings Association took any part in the negotiations concerning the loan in question or not. So far as I was concerned, Mr. Tomlin, the cashier, was the only officer known to me.

450 5. Who made representations to you about the liens upon Kenney's lands held and owned by the Daviess County Savings Association?

Ans. Mr. Tomlin.

6. State whether or not the entire amount of money loaned by plaintiffs to Kenney was or was not applied to P. S. Kenney's indebtedness; and, if not, who got any portion of it other than his creditors, and how much? State fully.

Ans. The entire amount of money loaned by plaintiffs to Kenney was applied on the indebtedness of Kenney; that is, if the Daviess County Savings Association applied the money that was paid direct to them on his indebtedness.

7. Who undertook to cancel the defendant bank's deeds of trust already on said P. S. Kenney's lands, and when and where did said pretended cancellation take place?

Ans. Robt. L. Tomlin, cashier of the Daviess County Savings Association, cancelled the deeds of trust held by the said Daviess County Saving Association on Kenney's lands in the office of the clerk of the circuit court and ex-officio recorder of Caldwell County, Mo., at Kingston, on the 6th of August, 1879.

8. If any deed of trust on Kenney's lands was paid and satisfied by you, describe the land by numbers, United States s'y, conveyed by such trust-deed.

Ans. We paid one deed of trust on Kenney's land, which was held by James D. Power, at the request of Mr. Tomlin, and for him. The deed of trust was upon the S. half sec. 3 and the E. half SE. quarter sec. 4, t'p 57, range 29.

9. If at any time any interest was paid on the loan to P. S. Kenney through the defendant bank, state by what officer of the Daviess County Savings Association such interest was paid, also the time when the

451 same was paid, and on whose account the same was paid, and who was credited with payment of same by your plaintiffs, or either of you; and also state whether or not any other officer of said corporation had any knowledge or information of such payment.

Ans. The interest due Jan. 1st, 1880, was sent to us by R. L. Tomlin, cashier of the Daviess County Savings Association, under date of December 20, 1879, in a letter which I hand to the notary to make a copy and mark "Exhibit N." We received the letter and draft on the 23rd of December, 1879. I do not know whether any other officer of the bank knew of such payment or not.

10. Did you investigate beforehand the liens on P. S. Kenney's lands which you claim to have paid off out of the money loaned to P. S. Kenney, in order to ascertain what particular lands were encumbered by such liens, and their extent and the amount secured thereby, and in order to ascertain whether or not such debts or any part of them were not in fact liens on any part of said Kenney's lands?

Ans. I investigated so far as the abstract shows and as the statements were given me by Mr. Tomlin and Mr. Kenney.

11. How did you know who was in the active management of the affairs and business of the Daviess County Savings Association prior to or at the time of making the negotiations concerning the loan to Kenney? Was you at the bank, or did you ever make any inquiry of the president or directors, or any one interested in said bank, as to who was in the active management of the affairs and business of said bank, and who attended to all its business of various kinds? Did you before or at that time ever investigate the business and affairs of the bank for the purpose of
452 ascertaining who, if any officer of the bank, attended to all the business of the bank of its various kinds, or for any other purpose? State whether you ever examined the records of any court or other records of Daviess County, Missouri, to see who attended to all the business of the bank of various kinds prior to that time.

Ans. I was informed by Mr. Tomlin, by Gillihan & Brosius, who were attorneys for the bank and by other citizens of Gallatin that the president of the bank was Col. McFerran, who resided at Colorado Springs, Colorado, and who was not to be found at Gallatin except when he made a visit there occasionally, once in a year or two, and that Mr. Tomlin managed the entire business of the bank. I had inquired several times who were the owners of the bank and was generally told that Mr. McFerran owned the most of it. Mr. Tomlin was interested, and one or two other parties who were seldom found at the bank. I did not know who the directors were, and never heard that there were any directors. I never had access to the records of the bank to see who attended to all the business of various kinds.

12. Is it not true that you never made any investigation or inquiry at or before the loan to Kenney, into the business of the bank, or who it was done by except such as you made of R. L. Tomlin, cashier.

Ans. No; it is not true. I did inquire at different times into the business of the bank, and its management of other persons than Mr. Tomlin.

13. State whether or not you relied wholly on the declarations of R. L. Tomlin, cashier, as to the extent of his authority to make the negotiations and contract set up by plaintiffs in this cause, and whether or not you looked or investigated any further. If you made any other or
453 further investigations state fully who you inquired of as to the extent of the cashier's authority to make contracts for the bank and what other investigations you made.

Ans. I did not rely wholly upon the declarations of Mr. Tomlin. Up to the time of our making this loan I had probably been in the bank of the defendant a dozen times at different periods since 1875. Had also had frequent conversations with Gillihan and Brosius, who were attorneys for the bank, respecting the bank and its management. Their statements were to the effect that Mr. Tomlin managed the bank locally; that Col. McFerran, the president, was a large stockholder, but that Mr. Tomlin was the only man who paid much attention to the bank, and he did about all the business in the way of managing it. I received the same information from other persons in Gallatin, and the bank was often referred to as "Tomlin's bank." I never found any other officer of the bank

present at any time and knew from actual knowledge by seeing releases of record made by Mr. Tomlin, as cashier, that Mr. Tomlin had released similar deeds of trust on the records of Daviess County, Mo. I relied also upon the custom and practice of the bank generally having a cashier to attend to its business, and I came to the natural conclusion, as Mr. Tomlin had authority to transact all the business of the bank behind its counter, attend to the correspondence, make loans, etc., and cancel deeds of trust of record, that his statement to me that he had authority to cancel the deeds of trust was correct.

14. State what commissions you were to receive for negotiating said loan from plaintiffs to Kenney, and who paid or agreed to pay you for such services; what was the aggregate amount of your commission, and if not paid how was it secured to you. If on Kenney's land describe the
454 same by numbers by United States survey, and if you have the original papers securing said commission please attach them hereto, both the bonds and deeds of trust, if such were made, and make them a part of this your deposition.

Ans. We were to receive two per cent. per annum from Kenney as commission for negotiating the loan to him, the aggregate amount of which was $1,000.00, which was secured to us by a deed of trust on all the land that was covered by the deed of trust securing the debt to the plaintiffs. I hand the notary the original notes and deed of trust to make copy and attach hereto as a part of this deposition marked Exhibits "O" and "P."

15. Was the deed of trust executed by Kenney and wife to plaintiffs, to secure the loan to Kenney, made a first lien on Kenney's lands described therein; and was the deed of trust executed to you to secure your commissions for making the loan made a lien on all of the lands described in the deed of trust to plaintiff, and was the same second, junior, and inferior only to plaintiffs' said loan thereon?

Ans. The deed of trust executed by Kenney and wife to the plaintiffs, was made a first lien on Kenney's land described therein, and the deed of trust executed to secure our commission for making the loan was made a lien on all the land described in plaintiffs' deed of trust and was made second, junior, and inferior to plaintiffs' lien only. This was the intention and understanding of Mr. Kenney, of the cashier and general manager of the Daviess County Savings Association, Mr. Tomlin, and of every one else who had any knowledge or connection with the negotiation of the loan.

16. State the value of P. S. Kenney's lands described in plaintiffs' trust-deed, stripped of all improvements, and, state what is the value of said improvements.

Ans. I think the farm of Kenney, as described in plaintiffs'
455 deed of trust worth, as it was when the loan was made, at a fair valuation, $30 per acre, and possibly more. I cannot say how much it is worth stripped of all improvements, nor the value of the improvements.

17. State upon what quarter-section of said land by United States survey the house and adjacent buildings are situated, and state the value of said house and adjacent buildings.

Ans. I cannot tell from memory, upon what quarter-section of land by United States survey the house and adjacent buildings are situated. The

house is a very fine one, which, I have no doubt, cost from $5,000 to $10,000.

A. S. WEBB ET AL.
vs.
DAVIESS CO. SAVINGS ASS'N ET AL.

Additional cross-interrogatories propounded to witness Lew E. Darrow, on the part of the defense.

Add'l cross-interrog. 1. At the time you contracted or arranged with Kenney to loan him $10,000 for complainants were you not aware of the fact that the various debts held by the Daviess County Savings Association against Kenney and secured by deed of trust upon said Kenney's lands in Caldwell County, Missouri, had not been paid and no arrangements, to your knowledge, or so far as you know, had been made for their payment or any part thereof? Please state all you knew at that time in relation thereto.

Ans. At the time application was made for Kenney's loan I understood he owed the Daviess County Savings Association a large amount of money, and that his purpose in obtaining the loan was to have the money applied on his debt. For this purpose the bank proposed to cancel the obligations of Kenney, and did release the deeds of trust which they
456 held against him and they were to apply the $10,000.00 received on his loan on his indebtedness, and take security from him for the balance of the debt, which said security should be junior to the deeds of trust given by Kenney to secure the plaintiffs and Frank and Darrow.

2. At the time you took the deed of trust from Kenney to secure the $10,000 for complainants upon his lands, did you not know that no part of Kenney's indebtedness to the Daviess County Savings Association had been then paid, and when Tomlin entered said pretended satisfaction of the deeds of trust given by Kenney securing said debts held by said association, did you not know that said pretended satisfaction was being entered without actual payment of the debts so secured?

Ans. I knew that Kenney's entire indebtedness to the bank, which was secured by the several deeds of trust which Mr. Tomlin, as cashier of the bank, released of record, had been fully paid by the execution and delivery by Kenney to Mr. Tomlin, for the bank, of a new note and a new deed of trust for the entire indebtedness; and Mr. Tomlin told me that the $10,000 would be endorsed on this new note, which was for some 35,000 or 36,000 odd dollars.

3. What amount of money had actually been paid to any one for the sole benefit and use of said association by you before Tomlin entered said pretended satisfaction?

Ans. $10,000 was the amount of money actually paid by me for the sole benefit of the Daviess County Savings Association.

4. Was the amount paid Tomlin paid before or after the new deed of trust was given, and on what note or notes was the same credited?

Ans. This amount was paid Mr. Tomlin, cashier, and on the James D. Power debt, immediately after the filing of the new deeds of trust, or as soon thereafter as payment could be made. I do not know how
457 Mr. Tomlin applied the money that was paid direct to him. Mr.

Tomlin had the new note and deed of trust which were made by Mr. Kenney to the Daviess County Savings Association of $35,000 or $36,000 odd dollars duly delivered to him before he released any of the deeds of trust.

LEW E. DARROW.

Sworn to and subscribed in my presence by the said Lew E. Darrow this 25th day of July, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

STATE OF IOWA,
Adams County, ss:

I, William D. Miner, jr., a notary public in and for the county and State aforesaid, to whom the within commission to take the deposition of Lew E. Darrow, of Corning, Adams County, Iowa, in the case of A. S. Webb et al. vs. The Daviess County Savings Association et al., was issued, do hereby certify that I caused the said Lew E. Darrow to appear before me, and that I did propound to said witness the interrogatories, cross-interrogatories, and additional cross-interrogatories herein contained, and that the said Lew E. Darrow did make answer, depose, and say under oath, as is herein set forth, that his answers have been reduced to writing by me as stated.

Witness my hand and official seal, at Corning, Iowa, this 25th day of July, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT A.

No. 6018.

Patrick S. Kenney.

UNITED STATES OF AMERICA:

458 Missouri farm bond. 8 per cent. $10,000.00. Principal and interest payable at Central National Bank, New York. Interest payable January 1st and July 1st each year. Due July 1st, 1884. Negotiated by Geo. W. Frank & Darrow, Corning, Iowa.

Farm bond.

Interest at eight per cent. per annum.

Know all men by these presents that I, Patrick S. Kenney, of the county of Caldwell and State of Missouri, for value received, am justly indebted to A. S. Webb, R. L. Belknap, & W. H. Kane, trustees under will of H. R. Remsen, dec'd, in the sum of ten thousand dollars, which sum of money I hereby promise to pay to the said A. S. Webb, R. L. Belknap, or W. H. Kane, trustees, their successors or assigns, on the first day of July, A. D. eighteen hundred and eight'-four, with interest thereon at the rate of eight per cent. per annum from the date hereof until paid, s'id interest being payable semi-annually on the first day of January & July of each and

every year, according to the tenor of ten interest notes of four hundred dollars each, bearing even date herewith, both principal and interest notes being payable at the Central National Bank, New York. And if default be made in the payment of any interest note, or any portion thereof, for the space of thirty days after the said note becomes due and payable, or in the payment of any taxes assessed against the real estate deeded to
459 secure this loan until the same shall have become delinquent, then all said principal and accrued interest shall, at the option of the said A. S. Webb, R. L. Belknap, or W. H. Kane, trustees, their successors or assigns, become at once due and payable without further notice. And should it become necessary to collect this bond, or any interest note attached hereto, by suit, a reasonable amount shall be allowed as attorneys' fee, to be taxed as part of the costs. It is expressly declared that this bond, and the interest notes attached to the same, are given for an actual loan of money for the amount of ten thousand dollars, and are secured by a first and only deed of trust of this amount on real estate situated in Caldwell County, and State of Missouri, which deed of trust is duly recorded.

Dated at Corning, in the county of Adams, and State of Iowa, on the first day of July, A. D. 1879.

PATRICK S. KENNEY.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July 1st*, 1879.

On the first day of Jan., 1880, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, four hundred dollars, for interest due on that day according to the tenor of a bond of $10,000 of even dated herewith. This note to draw interest at ten per cent. after maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(Written across the face in red ink:) The original of this coupon paid and cut off. 1.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July 1st*, 1879.

On the first day of July, 1880, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at
460 Central National Bank, New York, four hundred dollars, for interest due on that day, according to the tenor of a bond of $10,000 of even date herewith. This note to draw interest at ten per cent. after maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(On face in red ink:) 2.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July* 1*st*, 1879.

On the first day of Jan., 1881, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, four hundred dollars, for interest due on that day, according to the tenor of a bond of $10,000 of even date*d* herewith. This note to draw interest at the rate of ten per cent. per annum after maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(On face in red ink:) 3.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July* 1*st*, 1879.

On the first day of July, 1881, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, four hundred dollars, for interest due on that day, according to the tenor of bond of $10,000 of even date herewith. This note to draw interest at ten per cent. after maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(On face in red ink:) 4.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July* 1*st*, 1879.

On the first day of Jan., 1882, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, four hundred dollars, for interest due on that day, according to the tenor of bond of $10,000 of even date herewith. This note to draw interest at ten per cent. after maturity
461 until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(On face in red ink:) 5.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July* 1*st*, 1879.

On the first day of July, 1882, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, four hundred dollars, for interest due on that day, according to the tenor of a bond of $10,000 of even date herewith. This note is to draw interest at ten per cent. after maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(On face in red ink:) 6.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July 1st*, 1879.

On the first day of Jan., 1883, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, four hundred dollars, for interest due on that day, according to the tenor of a bond of $10,000 of even date herewith. This note is to draw interest at ten per cent. after maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(On face in red ink:) 7.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July 1st*, 1879.

On the first day of July, 1883, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, four hundred dollars, for interest due on that day, according to the tenor of a bond of $10,000 of even date herewith. This note is to draw interest at ten per cent. from maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(On face in red ink:) 8.

462 $400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July 1st*, 1879.

On the first day of Jan., 1884, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, four hundred dollars, for interest due on that day, according to the tenor of a bond of $10,000 of even dated herewith This note to draw interest at ten per cent. after maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6108.]

(On face in red ink:) 9.

$400.00.] UNITED STATES OF AMERICA.

CORNING, IOWA, *July 1st*, 1879.

On the first day of July, 1884, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, four hundred dollars, for interest due on that day, according to the tenor of a bond of $10,000 of even date herewith. This note to draw interest at ten per cent. after maturity until paid, and is secured by trust-deed properly recorded.

P. S. KENNEY.

No. 6018.]

(On face in red ink:) 10.

STATE OF IOWA, *Adams County, ss:*

I hereby certify that the within is a true and correct copy of the bond and interest notes given by Patrick S. Kenney to A. S. S. Webb, R. L. Belknap, or W. H. Kane, trustees, to secure the payment of interest for five years on the sum of ten thousand dollars.

[SEAL.] WM. D. MINER,
Notary Public.

EXHIBIT B.

No. 6018. Missouri trust-deed. Patrick S. Kenney & wife to A. S. Webb, R. L. Belknap, or W. H. Kane, trustees. Lew E. Dar-
463 row, trustee. $10,000.00. Date, July 1st, 1879. Due July 1st, 1884. Negotiated by Geo. W. Frank & Darrow, Corning, Iowa.

Deed of trust.

This deed, made and entered into this first day of July, eighteen hundred and seventy-nine, by and between Patrick S. Kenney & Elizabeth Kenney, husband and wife, of the county of Caldwell, State of Missouri, parties of the first part, Lew E. Darrow, of the county of Adams, State of Iowa, party of the second part, and A. S. Webb, R. L. Belknap, or W. H. Kane, trustees under will of H. R. Remsen, dec'd, parties of the third part, witnesseth: That the said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey, and confirm unto the said party of the second part the following described real estate, situate, lying, and being in the county of Caldwell, and State of Missouri, to wit: The south half of section three (3), the south half of section four (4), the northeast fourth of the northeast quarter, the west half of the northeast quarter, the east half of the northwest quarter, & the northwest fourth of the southeast quarter of section nine (9), the north fourth and the southeast fourth of the northeast quarter of section ten (10), all in township fifty-seven (57) north, of range twenty-nine (29) west, containing in all ten hundred and eighty acres (1,080) by Government survey. To have and to hold the same, with the appurtenances, to the party of the second part and to his successor or successors in this trust, and to him and his grantees and assigns forever.

464 In trust, however, for the following purposes: Whereas Patrick S. Kenney, one of the said parties of the first part, has this day made, executed, and delivered to the said parties of the third part one bond and ten interest notes of even date herewith, by which he promises to pay to the said A. S. Webb, R. L. Belknap, or W. H. Kane, trustees, or order, for value received, ten thousand (10,000) dollars, as follows: Dated July 1st, 1879, payable July 1st, 1884, with interest at the rate of eight per cent. per annum, payable semi-annually on the first day of January and July of each year, according to the tenor of ten interest notes, of four hundred (400) dollars each, attached to and bearing even date with said bond. Principal and interest payable at the Central National Bank, in the city of New York:

Now, therefore, if the said parties of the first part, or any one for them, shall well and truly pay off and discharge the debt and interest expressed in the said bond and notes, and every part thereof, when the same become due and payable according to the true tenor, date, and effect of said bond and notes, then this deed shall be void, and the property herein before conveyed shall be released at the cost of the said parties of the first part.

But should the said parties of the first part fail or refuse to pay the said debt or the said interest, or any part thereof, when the same shall become due and payable according to the true tenor, date, and effect of said bond and notes, or should the said parties of the first part fail or refuse to pay all taxes or assessments, ordinary or extraordinary, until the same shall have become delinquent which are now or may hereafter be assessed upon the property aforesaid during the continuance of this trust, then the whole of said principal and accrued interest shall, at the option of the legal holder of the said bond, become at once due and payable, and this
465 deed shall remain in force; and the said party of the second part, at the request of the legal holder of the said bond, may enter into the possession of the said property herein before described, and sell the same, or any part thereof, at public vendue to the highest bidder, at the court-house door, in the town of Kingston, Caldwell County, Missouri, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed and published in the county of Caldwell, Missouri, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale; and any statement of facts or recital by the said trustee in relation to the non-payment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser, shall be received as prima facia evidence of such facts; and such trustee shall, out of the proceeds of said sale, pay, first, the cost and expenses of executing this trust, including legal compensation to the trustee for his services; and next, he shall apply the proceeds remaining over to the payment of said debt and interest and to the payment of any taxes or assessments due at the time of said sale upon the premises aforesaid, or upon such part thereof as may be sold for the purpose of executing this trust; and the remainder, if any, shall be paid to the said parties of the first part or their legal representatives.

And in case the said bond and accrued interest at time of sale, together with delinquent taxes and assessments, and all costs and reasonable expenses of executing said trust, shall be paid by the sale of part of the premises aforesaid, then the title to and the right of entry upon the
466 unsold residue of the premises aforesaid shall vest absolutely in the parties of the first part, and the said unsold residue shall be fully discharged from all liens created by the trust aforesaid at the cost of said parties of the first part.

And it is stipulated and agreed by the said parties of the first part that in case the said party of the second part, by reason of absence, death, refusal to act, or disability in anywise, should fail to perform this trust as herein provided, then the said A. S. Webb, R. L. Belknap, or W. H. Kane, trustees, or the legal holder of the said bond, shall have the option of substituting any other person in his stead, and the said party so sub-

stituted shall have the same powers as the trustee herein before named, and the acts and doings of said party so substituted shall be as effectual and binding upon all parties as if performed by the said party of the second part.

And it is further agreed by the parties of the first part that should it become necessary to collect the said bond or any of said interest notes by suit, or should the legal holder of the said bond or of said notes elect so to collect, then and in that case a reasonable attorney's fee for collecting same shall be allowed, to be taxed as other costs in the suit. And the said party of the second part covenants faithfully to perform and fulfill the trust herein created, not being liable or responsible for any mischance occasioned by others.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

(Signed) PATRICK S. KENNEY. [SEAL.]
ELIZABETH KENNEY. [SEAL.]
LEW E. DARROW. [SEAL.]

STATE OF MISSOURI,
County of Caldwell, ss:

467 Be it remembered that on this 6th day of August, A. D. 1879, before the undersigned, a notary public within and for the county of Caldwell and State of Missouri, personally came Patrick S. Kenney and Elizabeth Kenney, his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged that they executed the same for the uses and purposes therein mentioned.

And the said Elizabeth Kenney, being by me first examined separate and apart from her husband, and made fully acquainted with the contents of the said instrument, acknowledged that she executed the same and relinquishes her dower in the real estate therein mentioned, freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereto set my hand and affixed my official seal, at my office in Kidder, the day and year first above written. I qualified as a notary public Feb. 3d, 1877, and my commission expires Feb. 3d, 1883.

[SEAL.] (Signed) A. W. RICE,
Notary Public.

STATE OF MISSOURI,
County of Caldwell, ss:

RECORDER'S OFFICE.

I, Winfield Miller, clerk of the circuit court and ex-officio recorder of said county, do hereby certify that the within instrument of writing was on the sixth day of August, A. D. 1879, duly filed for record in this office at 1 o'clock 55 min. p. m., and is duly recorded in the records of this office, in book O, at page 208.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Kingston, this 8th day of Aug., A. D. 1879.

[SEAL.] (Signed) WINFIELD MILLER,
Recorder,
468 Per J. S. KENDALL, *Deputy.*

Filed for record this sixth day of August, at 1.55 p. m., A. D. 1879.
WINFIELD MILLER,
Recorder.

Recorder's fee, $2.00, paid.

STATE OF IOWA, *Adams County*:

I hereby certify that this is a true & correct copy of the original deed of trust given by Patrick S. Kenney & Elizabeth Kenney to A. S. Webb, R. L. Belknap or W. H. Kane, trustees, to secure ten thousand dollars.

[SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT C.

GALLATIN, MO., *July 1st*, 1879.

Mess. GEO. W. FRANK & DARROW:

DEAR SIRS: We enclose appl'n of P. S. Kenney for a loan of $12,000 on his "sheep ranch," the finest farm in Northwest Missouri; we think the improvements have cost more than double the amount applied for; the D. C. S. Ass'n will release all trust-deeds and take second lien for their debt, which will be about $20,000. If Mr. Darrow will come down and look at the farm, we feel certain you will make the loan. Mr. K. *who* has more than 3,000 sheep and is beginning to realize some income from them. Mr. Dunn, of Kingston, is compiling abstract of title; we understand the title is all O. K., especially the taxes; have seen the receipts. The writer was over the farm last week and found it a beauty, indeed; water in abundance, plenty of timber, enough stone, and then the fences, 9 miles of hedge, besides any amount of rail fence. Come down and view the landscape.

Very resp'y,

GILLIHAN & BROSIUS.

469 STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of a letter rec'd by Geo. W. Frank & Darrow, from Gillihan & Brosius.

Witness my hand and seal, July 25, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT D.

(Copy.)

GALLATIN, MO., *July 5th*, 1879.

Messrs. GEO. W. FRANK & DARROW:

DEAR SIRS: Mr. Kenney wants his loan at 10 % interest; no commission except one per cent., which we charge him.

D. C. S. A. intends to see interest paid; the annual "wool clip" will more than pay it, to say nothing of 400 to 500 wethers each year after this. We want one of you to see this farm, and these sheep (3,200 of

them), and the free pasture joining the farm, and the town of Kidder, and "Thayer College," all "rael down East" institutions (except the sheep).

Kenney is from Old Ireland.

Very resp'y,

GILLIHAN & BROSIUS.

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of a letter received by Geo. W. Frank & Darrow from Gillihan & Brosius.

Witness my hand and seal, July 25, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

470 EXHIBIT E.

(Telegram. Copy.)

GALLATIN, MO., 17, 1879.

GEO. W. FRANK & DARROW, *Corning:*

Kenney declines to complete loan; I will pay your expenses for trip down. I write.

R. L. TOMLIN, *Cashier.*

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of a telegram received by Geo. W. Frank & Darrow, from R. L. Tomlin, cashier.

Witness my hand and seal July 25, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT G.

(Copy.)

CORNING, IOWA, *July 21st*, 1879.

R. L. TOMLIN, Esq., *Gallatin, Mo.:*

DEAR SIR: Yours of the 18th inst. is at hand, and I am very sorry to hear that the loan to P. S. Kenney will have to fall through. We have been to considerable trouble in New York to place the loan, having presented the application to several parties and obtaining consent of one after much solicitation, to accept the loan. We would much prefer still to close the loan unless there are serious obstacles to prevent it. My expenses to examine the farm were just $15, and $25 additional would be very small pay for the amo'nt of time and labor we have devoted to this
471 loan to place it. In fact, this would not cover our expenses. We send the abstract to you, and if you find that the loan cannot be closed we will send you Mr. Kenney's signature to the bonds which he signed. Please let us hear from you.

Very resp'y,
(Signed) L. E. DARROW.

Expenses to Kidder, $15; time and expenses here and in New York, $25—$40.

STATE OF IOWA, *Adams Co.:*

I hereby certify that this is a true and correct copy of a letter sent by Lew E. Darrow to R. L. Tomlin, esq., dated July 21, 1879.

Witness my hand and seal July 25, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT F.

(Copy.)

GALLATIN, MO., *July* 18, 1879.

LEW E. DARROW, Esq., *Corning, Iowa:*

DEAR SIR: I dispatched to you last night that Kenney could not complete the loan as contemplated. I write now to say that he came to Gallatin on yesterday, and reported some obstacles which he had not mentioned before and which would tend to make the loan undesirable for you under the circumstances. If you will send down his abstract to Gillihan & Brosius to be delivered to me, and a statement of amount of
472 your expenses and reasonable amount for your expenses & trouble in coming to look at the land, I will pay your expenses and reasonable amount for your trouble. I am sorry at this lame and impotent conclusion of the affair, but can't help it.

Very respectfully,

R. L. TOMLIN.

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of a letter received by Lew E. Darrow from R. L. Tomlin.

Witness my hand and seal July 25, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT H.

(Copy.)

Messrs. GEO. W. FRANK & DARROW, *Corning, Iowa:*

DEAR SIRS: Yours of July 21st is just received. In reply will say that if you can let the $12,000 go on the Kenney land without requiring him to supply deed to the three railroad forties, the loan may be finished up. Kenney is badly at outs with the H. & St. Joe R. R. officers, and does not wish to hold any communication with them. But he has been in open and notorious possession of these lands (the 3 forties) for nearly 20 years, and wants nothing said or done that would call attention of any one to the fact that he has no deed on record, & can produce none to these pieces.

Regarding these pieces, then, as practically stricken out of the farm for purposes of security to you, I still think the loan a good one and
473 safe one. I will see that the house is insured for not less than $3,500, and the interest of this bank is such (as you know) that the

bank must protect your loan, both interest and principal, should Kenney fail to do so himself. The aggregate wealth of our stockholders is more than $200,000, outside of their investment in the Daviess County Savings , and they will never let that place sell. But I don't apprehend any difficulty at all; Kenney will pay the loan. Please let me know if this will suit you. In case we go on and close the matter you can retain enough money to pay the Power debt in your own hands; and as Mr. O. S. Smith, of St. Joseph, or Mr. Thomas Culligan, of St. Joe, one or the other, has the Power note, ans Culligan is trustee for Power & knows all about his whereabouts, &c., you can pay off the note to Smith as you go through St. Joe, and he can have or procure deed of release from Power. Mr. Culligan is manager, I think, of the Corby estate and can give you, I judge, the best men in St. Joe for reference. The Ryan judgment and Breckenridge bank judgment can be paid to the circuit clerk at Kingston, and I think that is all except our debt. Let me hear from you again.

Resp'y,

R. L. TOMLIN, *Cash.*

STATE OF IOWA, *Adams County*:

I hereby certify that this is a true and correct copy of a letter received by Geo. W. Frank and Darrow from R. L. Tomlin, cashier.

Witness my hand and seal, July 25, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

474 EXHIBIT. I.

(Copy.)

CORNING, IOWA, *July 25th*, 1879.

R. L. TOMLIN, Esq., *Cash., Gallatin, Mo.:*

DEAR SIR: Yours of the 23d is at hand. We would be willing to make the loan to Kenney for $10,000, and leave out the three 40-acre railroad pieces, and this would be what Kenney spoke of when we were there in case he could not find the deeds. We think that this amount is all that we should place on the farm under the circumstances, and this would be nearly $10 an acre on the land. As we look upon it the loan is virtually to your bank unless by some good fortune Kenney should have unusual success and be able to redeem the land. We do not believe our customer would care to make the loan for $12,000 and leave out the three 40's, as there is another 40-acre piece to which Mr. Kenney's title is only good by possession. You remember that the R. R. land is some of the best land he has. We should feel at liberty to make the loan for $10,000, on all the land except the three R. R. 40's, and would be perfectly willing to leave them out entirely and not include them in the mortgage. If this will answer please let us know and we will make new papers and fix a time when we can close the matter up.

(Signed) GEO. W. FRANK & DARROW.

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of a letter sent by Geo. W. Frank & Darrow to R. L. Tomlin, cashier, July 25, 1879.

Witness my hand & seal, July 25, 1881.

[SEAL.] W. D. MINER,

475 *Notary Public.*

EXHIBIT J.

(Copy.)

GALLATIN, MO., *July 28th*, 1879.

Mess's. GEO. W. FRANK & DARROW, *Corning, Iowa:*

DEAR SIRS: Yours of July 25th is at hand and contents considered. You may make out news papers for the $10,000 loaned to P. S. Kenney, leaving out the three R. R. forties of land. I send you the abstract made by the Kingston man, so you can ascertain the numbers of the land to be included. I suppose you will come down with the papers and with affidavits as you may want Mr. K. to make all prepared. I wish when you come through St. Joe, as I suppose you will, you would call on Mr. O. S. Smith, and see the Power note, and find out just what is due on it, and get Mr. Smith to prepare and forward to Father Power a deed of release, to be executed and returned to him (Smith), and then you can retain money to pay that debt until Smith is prepared to hand over the deed of release. As to the trust-deeds I bought in from other parties, such as Quirk and Musser and Barnum, I can satisfy the records as assignee of the parties I bought from, and cancel the notes and then leave them in your possession if you wish. Though I am satisfied I have a perfect to enter satisfaction upon the records as assignee, the securities being negotiable, and the owners having indorsed and transferred them to me, or to the bank of which I am cashier, I will write Mr. Kenney to-day advising him of the revival of the matter on this new basis, and you can fix a day when you will come down, and let me know some days ahead or

476 before you come, so that I can advise Kenney and have him ready. If you could come August 5th, or next Tuesday week, it might suit, but fix your own day.

Very respectfully,

R. L. TOMLIN, *Cas.*

STATE OF IOWA, *Adams Co.:*

I hereby ce'tify that this is a true and correct copy of a letter received by Geo. W. Frank & Darrow from R. L. Tomlin, cas.

Witness my hand & seal at Corning, Ia., 7, 25, '81.

[SEAL.] W. D. MINER, JR.,

Notary Public.

EXHIBIT K.

CORNING, IOWA, *July 31st*, 1879.

R. L. TOMLIN, Esq., *Cas., Gallatin, Mo.:*

DEAR SIR: Yours of 28th is at hand, and we expect to go to close the

Kenney $10,000 loan next Wednesday, Aug. 6th. Will send *you* the papers to you to-morrow, so you can have them executed Monday or Tuesday and meet me at Hamilton or Kidder on the train Wednesday morning. I will see Smith in St. Joe if I can find him. Have written him this morning asking for amount due Power.

(Signed) LEW E. DARROW.

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of a letter sent by Lew E. Darrow to R. L. Tomlin, cashier, July 31, 1879.

477 [SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT L.

CORNING, IOWA, *August 1st*, 1879.

R. L. TOMLIN, Esq., *Gallatin, Mo.:*

DEAR SIR: We inclose herewith papers in the Patrick Kenney loan; new trust-deed and bond in each case, and also 5 affidavits for Mr. Kenney to sign. We have dated these papers July 1st, thinking perhaps it would be more convenient at that time than the 1st of August. Of course we will adjust the interest when we settle up. Please have these papers executed and bring them with you Wednesday morning. We think it would be best for Mr. Kenney to go to Kingston with us in closing the loan. Have the insurance effected to the amount you stated in your letter, $3,000 or $3,500. We will have the old papers which Mr. Kenney signed with us, and surrender them to you when we see you. Have Mr. Kenney take those deeds which we looked up and wanted recorded when we were there, tax-deed to John Meedough and quitclaim-deed from Meedough to Kenney, both conveying NW. SE. 9, 57, 29.

(Signed) GEO. W. FRANK & DARROW.

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true & correct copy of a letter sent by Geo. W. Frank & Darrow to R. L. Tomlin, cas., Aug. 1, 1879.

Witness my hand and seal July 25, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT M.

478 CORNING, IOWA, *August 9th*, 1879.

R. M. TOMLIN, Esq.,
Cas., Gallatin, Mo.:

DEAR SIR: We find that you made a mistake in the name of Mr. Smith, of St. Joseph, who transacts the business for Father Power. It is O. M. Smith instead of O. S. Smith. Had we known the correct name it would have saved us much trouble and time.

We saw Mr. Smith Thursday night, and he said he would send for release of the trust deed at once.

We inclose draft for $201.14, the balance of the Kenney loan as per

memorandum, say, amount of loan $10,000, one month and six days' interest, $100—making a total of $10,100.

We paid clerk of Caldwell Co	$1,689 86
We paid for recording trust-deeds	4 00
Paid you cash	5 00
Drafts	3,000 00
We hold to pay the Power claim	5,200 00
All of which with amount inclosed	201 14
Makes the amount of the loan	10,100 00

Mr. Smith said he would inform us when he received the release and then we should send him the money. We hope it will come around all right in a short time.

(Signed) GEO. W. FRANK & DARROW.

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of a letter sent by Geo. W. Frank & Darrow to R. L. Tomlin, cashier, August 9, 1879.

Witness my hand and seal July 25, 1881.

[SEAL.] W. D. MINER,
479 *Notary Public.*

EXHIBIT N.

(Copy.)

GALLATIN, MO., *Dec.* 20, 1879.

Mess. GEO. W. FRANK & DARROW, *Corning, Iowa:*

DEAR SIRS: I inclose draft $500.00 to pay the interest on P. S. Kenney. Please return the interest coupon to me, as I will have to hold it against him until the sheep are sheared.

Please advise me also how much money it took to settle the Power debt, and if there was any balance left in your hands on account of the Kenney loan after paying Power, & oblige

Yours respectfully,

(Signed) R. L. TOMLIN, *Cashier.*

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of a letter received by Geo. Frank & Darrow from R. L. Tomlin, cashier.

Witness my hand and seal July 25, 1881.

[SEAL.] W. D. MINER, JR.,
Notary Public.

EXHIBIT O.

No. 6018 B. Ten notes of Patrick S. Kenney, $100.00 each, dated July 1st, 1879, due January 1st and July 1st, each year. P. O. address: Kidder, Caldwell Co., Missouri. Negotiated by Geo. W. Frank & Darrow, Corning, Iowa.

480 (Copy.)

$100.00.] CORNING, IOWA, *July 1st*, 1879.

On the first day of Jan., 1880, for value received, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking house in Corning, Iowa, one hundred (100) dollars. This note to draw interest at ten per cen'. after maturity until paid, and is secured by a mortgage properly recorded; and I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(Written across the face in red ink:) 1. This note paid and cut off from original.

$100.00.] CORNING, IOWA, *July 1st*, 1879.

On the first day of July, 1880, for value received, promise to the order of Geo. W. Frank & Darrow, at their banking house in Corning, Iowa, one hundred (100) dollars. This note to draw interest at ten per cent. after maturity until paid, and is secured by a mortgage properly recorded; and I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On face in red ink:) 2.

$100.00.] CORNING, IOWA, *July 1st*, 1879.

On the first day of Jan., 1881, for value received, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking house in Corning, Iowa, one hendred (100) dollars. This note to draw interest at ten per cent. after maturity until paid, and is secured by a mortgage properly recorded; and I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On face in red ink:) 3.

$100.00.] CORNING, IOWA, *July 1st*, 1879.

On the first day of July, 1881, for value received, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking houst in Corning, Iowa, one hundred (100) dollars. This note to draw interest at
481 ten per cent. after maturity until paid, and is secured by a mortgage properly recorded; and I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On face in red ink:) 4.

$100.00.] CORNING, IOWA, *July* 1*st*, 1879.

On the first day of Jan., 1882, for value received, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking house in Corning, Iowa, one hundred (100) dollars. This note to draw interest at ten per cent. after maturity until paid, and is secured by a mortgage properly recorded; and I agree also to pay a reasonab'e attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On face in red ink:) 5.

$100.00.] CORNING, IOWA, *July* 1*st*, 1879.

On the first day of July, 1882, for value received, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking houst in Corning, Iowa, one hundred (10) dollars. This note to draw interest at ten per cent. after maturity until paid, and is secured by a mortgage properly recorded; and I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On face in red ink:) 6.

$100.00.] CORNING, IOWA, *July* 1*st*, 1879.

On the first day of Jan., 1883, for value received, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking houst in Corning, Iowa, one hundred (100) dollars. This note to draw interest at ten per cent. after maturity until paid, and is secured by a mortgage properly recorded; and I agree also to pay a reasonab'e attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On face in red ink:) 7.

$100.00.] CORNING, IOWA, *July* 1*st*, 1879.

482 On the first day of Jul., 1883, for value receiveed, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking house in Corning, Iowa, one hundred (100) dollars. This note to draw interest at ten per cent. after maturity until paid, and is secured by a mortgage properly recorded; and I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On face in red ink:) 8.

$100.00.] CORNING, IOWA, *July* 1*st*, 1879.

On the first day of Jan. 1884, for value received, I promise to pay to

the order of Geo. W. Frank & Darrow, at their banking house in Corning, Iowa, one hundred (100) dollars. This note to draw interest at ten per cent. after maturity until paid, and is secured by a mortgage properly recorded, and I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On face in red ink:) 9.

$100.00.] CORNING, IOWA, *July 1st*, 1879.

On the first day of July, 1884, for value received, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking house in Corning, Iowa, one hundred (100) dollars. This note to draw interest at ten per cent. after maturity, and is secured by a mortgage properly recorded; and I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018 B.]

(On the face in red ink:) 10.

STATE OF IOWA, *Adams County:*

I hereby certify that these are true and correct copies of the commission notes given by Patrick S. Kenney to secure the payment of one thousand dollars to Geo. W. Frank & Darrow.

[SEAL.] D. W. MINER, JR.,
Notary Public.

483 EXHIBIT P.

No. 6018 B. Missouri trust-deed. Geo. W. Frank & Darrow. Date, July 1st, 1879. $100.00 due Jan. first and July first of each year for five years. Negotiated by Geo. W. Frank & Darrow, Corning, Iowa.

Deed of trust.

This deed, made and entered into this first day of July, eighteen hundred and seventy-nine, by and between Patrick S. Kenney and Elizabeth Kenney, husband and wife, of the county of Caldwell, State of Missouri, parties of the first part, and David W. Mc'air, of the county of Adams, State of Iowa, party of the second part, and Geo. W. Frank & Darrow, of the county of Adams, State of Iowa, parties of the third part, witnesseth:

That the said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey and confirm, unto the said party of the second part, subject to a deed of trust this day executed to Lew E. Darrow, trustee for A. S. Webb, R. L. Belknap, or W. H. Kane, trustees, the following-described real estate, situate, lying, and being in the county of Caldwell and State of Missouri, to wit, the south half of section three (3), the south half of section four (4,)

the northeast fourth of the northeast quarter, the west half of the northeast quarter, the east half of the northwest quarter, and the northwest fourth of the southeast quarter of section nine (9), the north fourth and the southeast fourth of the northeast quarter of section ten (10), all in township fifty-seven (57) north, of range twenty nine (29) west, containing in all ten hundred and eighty (1,080) acres by Government survey,

484 To have and to hold the same, with the appurtenances, to the party of the second part, and to his successor or successors in this trust, and to him and his grantees, forever; in trust, however, for the following purposes:

Whereas the said Geo. W. Frank and Darrow, as the agents of Patrick S. Kenney, have, at his request, negotiated and procured for him a loan of ten thousand (10,000) dollars from A. S. Webb, R. L. Belknap, or W. H. Kane, trustees; and whereas the said Patrick S. Kenney has agreed to pay and is justly indebted to the said Geo. W. Frank & Darrow for such services in the sum of one thousand (1,000) dollars, to be paid in ten equal semi-annual payments of one hundred (100) dollars each, on the first day of January and 'uly of each and every year, and to bear interest at the rate of ten per cent. per annum after maturity until paid, according to the tenor and effect of ten promis'ory notes this day executed and delivered by the said Patrick S. Kenney to the said Geo. W. Frank & Darrow, payable at their banking-house in Corning, Iowa:

Now, therefore, if the said parties of the first part, or any one for them, shall well and truly pay off and discharge the debt and interest expressed in the said promissory notes and every part thereof, when the same become due and payable according to the true tenor, date, and effect of said promissory notes, then this deed shall be void and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part.

But should the said parties of the first part fail or refuse to pay the said debt, or the said interest, or any part thereof, when the same shall become due and payable according to the true tenor, date, and effect of said promissory notes; or should the said parties of the first part fail or refuse to pay all taxes or assessments, ordinary

485 or extraordinary, until the same shall have become delinquent, which are now or may hereafter be assessed upon the property aforesaid during the continuance of this trust, then the whole of said principal and accrued interest shall, at the option of the legal holder of the said promissory notes, become at once due and payable, and this deed shall remain in force; and the said party of the second part, at the request of the legal holder of the said promissory notes, may enter into possession of the property hereinbefore described, and sell the same, or any part thereof, at public vendue, to the highest bidder, at the court-house door, in the town of Kingston, Caldwell County, Missouri, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the propefty to be sold, by advertisement in some newspaper printed and published in the county of Caldwell, Missouri; and, upon such sale, shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, and release the proceeds of said sale; and any statements of facts or recital by the said trustee in relation to the non-payment of the money secured to be paid, the advertisement, sale, receipt of the

money, and the execution of the deed to the purchaser shall be received as prima facie evidence of such facts; and such trustee shall, out of the proceeds of said sale, pay, first, the cost and expenses of executing this trust, including legal compensation to the trustee for his services; and, next, he shall apply the proceeds remaining over to the payment of said debt and interest, and to the payment of any taxes or assessments due at time of said sale upon the premises aforesaid, or upon such part thereof as may be sold for the purpose of executing this trust, and the remainder, if any, shall be paid to the said parties of the first part, or their legal representatives.

486 And in case the said promissory note and accrued interest at time of sale, together with delinquent taxes and assessments and all costs and reasonable expenses of executing said trust, shall be paid by the sale of part of the premises aforesaid, then the title to and the right of entry upon the unsold residue of the premises aforesaid shall vest absolutely in the parties of the first part, and the said unsold residue shall be fully discharged from all liens created by the trust aforesaid, at the cost of said parties of the first part.

And it is stipulated and agreed by the said parties of the first part that in case the said party of the second part, by reason of absence, death, refusal to act, or disability in anywise, should fail to perform this trust, as herein provided, then the said Geo. W. Frank & Darrow, or the legal holder of the said promissory notes, shall have the option of substituting any other person in his stead, and the said party so substituted shall have the same powers as the trustee hereinbefore named, and the acts and doings of said party so substituted shall be as effectual and binding upon all parties as if performed by the said party of the second part.

And it is further agreed by the parties of the first part that should it become necessary to collect the said promissory notes or any of them by suit, or should the legal holder of said promissory notes elect so to collect, then and in that case a reasonable attorney's fee for collecting same shall be allowed, to be taxed as other costs in the suit. And the said party of the second part covenants faithfully to perform and fulfill the trust herein created, not being liable or responsible for any mischance occasioned by others.

487 In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

(Signed) PATRICK S. KENNEY. [SEAL.]
ELIZABETH KENNEY. [SEAL.]
DAVID W. McNAIR. [SEAL.]

STATE OF MISSOURI,
County of Caldwell, ss:

Be it remembered that on this 6 day of August, A. D. 1879, before the undersigned, a notary public within and for the county of Caldwell and State of Missouri, personally came Patrick S. Kenney and Elizabeth Kenney, his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged that they executed the same for the uses and purposes therein mentioned.

And the said ELIZABETH KENNEY, being by me first examined separate

and apart from her husband, and made fully acquainted with the contents of the said instrument, acknowledged that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office, in Kidder, the day and year first above written. I qualified as notary public, Feb'y 3d, 1877, and my commission expires Feb'y 3d, 1883.

[SEAL.] A. W. RICE, *Notary Public.*

STATE OF MISSOURI,
County of Caldwell, ss:

I, Winfield Miller, clerk of the circuit court and ex officio re-
488 corder of said county, do hereby certify that the within instrument of writing was on the 6th day of August, A. D. 1879, duly filed for record in this office, at 1 o'clock 56 min. p. m., and is duly recorded in the records of this office, in book O, at page 210.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Kingston, this 9th day of August, A. D. 1879.

[SEAL.] (Signed) WINFIELD MILLER,
Recorder,
Per J. A. KENDALL, *Deputy.*

Filed for record this 6th day of August, at 1.56 p. m., A. D. 1879.
WINFIELD MILLER, *Recorder.*

Recorder's fee, $2.00; paid.

STATE OF IOWA, *Adams County:*

I hereby certify that this is a true and correct copy of the original deed of trust given by Patrick S. Kenney & Elizabeth Kenney to Geo. W. Frank & Darrow to secure one thousand dollars.

[SEAL.] W. D. MINER, JR.,
Notary Public.

489 EXHIBIT B.

Deed of trust.

This deed of trust, made and entered into this 1st day of July, 1879, by and between Patrick S. Kenney and Elizabeth Kenney, husband and wife, of the county of Caldwell, State of Missouri, parties of the 1st part, Lew E. Darrow, of the county of Adams, State of Iowa, party of the second part, and A. S. Webb, W. G. Belknap, or W. H. Kane, trustees under will of H. R. Remsen, dec'd, parties of the third part, witnesseth:

That the said parties of the 1st part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, and convey and confirm, unto the said party of the second part, the following-described real estate, situate, lying, and being in the county of Caldwell and State of Missouri, to wit: The S. half of sec. 3; the S. half of sec.

4; NE. quarter NE. quarter; W. half NE. quarter; the E. half NW. & the NW. quarter SE. quarter sec. 9; the N. quarter & the SE. quarter NE. quarter sec. 10, all in township 57 N., of range 29 west, containing in all ten hundred & eighty acres by Government survey. To have and to hold the same, with the appurtenances, to the party of the second part, and to his successor or successors, in trust, and to him and his grantees and assigns, forever:

In trust for the following purposes: Whereas Patrick S. Kenney, one of the said parties of the 1st part, has this day made and executed and delivered to the said parties of the third part, one bond and ten interest notes of even date herewith, by which he promised to pay to the said A. S. Webb, R. L. Belknap, or W. H. Kane, trustees, or order, for value received, ten thousand ($10,000) dollars, as follows: dated
490 July 1st, 1879, payable July 1st, 1884, with interest at the rate of eight per cent. per annum, payable semi-annually on the 1st of January & July of each and every year, according to the tenor of ten interest notes of four hundred ($400) dollars, each attached to and bearing even date with said bond, principal and interest payable at the Central National Bank in the city of New York.

Now, therefore, if the said parties of the 1st part, or any one for them, shall well and truly pay off and discharge the debt and interest expressed in the said bond and notes, and every part thereof when the same becomes due and payable, according to the true tenor, date, and effect of said bond and notes, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part.

But should the said parties of the 1st part fail to pay the debt or the said interest or any part thereof when the same shall become due and payable, according to the true tenor, date, & effect of said bond and notes, or should the said parties of the first part fail or refuse to pay all taxes or assessments, ordinary or extraordinary, until the same shall become delinquent, which are now or may be hereafter assessed upon the property aforesaid during the continuance of this trust, then the whole of said principal and accrued interest shall at the option of the legal holder of the said bond become at once due and payable, & this deed shall remain in full force, and the said party of the second part at the request of the legal holder of the said bond may enter into possession of the property hereinbefore described and sell the same or any part thereof at public vendue to the highest bidder, at the court-house, in the town of Kingston, Caldwell Co., Mo., for cash, first giving thirty days' notice of the time,
491 terms, place of said sale, and of the property to be sold, by advertisement in some newspaper printed and published in the county of Caldwell, Missouri, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, & receive the proceeds of said sale, & any statement of facts or recital by the said trustee in relation to the non-payment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser, shall be received as prima facie evidence of such facts, and said trustee shall, out of the proceeds of said sale, pay first the cost & expenses of executing this trust, including legal compensation to the trustee for his services; and next, he shall apply the proceeds remaining over to the payment of said debt & interest, & to the payment of any taxes or as-

sessments due, at time of sale, upon the premises aforesaid, or upon such part thereof as may be sold for the purpose of executing this trust, and the remainder, if any, shall be paid to the said parties of the 1st part, or their legal representatives; & in case the said bond and accrued interest at the time of sale, together with delinquent taxes and assessments and all cost and reasonable expenses of executing said trust, shall be paid by the sale of part of the premises aforesaid, then the title and the right of entry upon the unsold residue of the premises aforesaid shall rest absolutely in the parties of the 1st part, and the said unsold part shall be fully discharged from all liens created by the trust aforesaid at the cost of said parties of the first part; and it is stipulated and agreed by said parties of the 1st part that in case the said party of the 2nd part, by reason of the absence of, death, refusal to act, or disability in any wise, shall fail to perform this trust as herein provided, then the said A. S. Webb, R. L. Belknap, or W. H. Remsen, trustee, or the legal holder of said bond, shall have
492 the option of substituting any other person in his stead, and the said party so substituted shall have the same powers as trustee hereinbefore named, and the acts and doing of said party so substituted shall be as effectual and binding upon all parties as if performed by said party of the 2nd part; and it is further agreed by the parties of the first part that should it become necessary to collect the said bond or any of the said interest notes by suit, or should the legal holder of the said bond or of said notes elect to collect them, and in that case a reasonable att'ys fee for collecting the same shall be allowed to be taxed as other costs in the suit, & the said party of the 2nd part covenants faithfully to perform and fulfill the trust herein created, not being liable or responsible for any mischance occasioned by others.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

PATRICK S. KENNEY.
ELIZABETH KENNEY.
LEW E. DARROW.

The above was duly acknowledged on the 6th day of August, 1879, before A. H. Rice, notary public, and duly recorded in the records of Caldwell Co., Mo., on the 6th day of August, 1879.

EXHIBIT A.

Know all men by these presents that I, Patrick S. Kenney, of the county of Caldwell and State of Mo., for value received, am justly indebted unto A. S. Webb, R. L. Belknap, or W. H. Kane, trustee under the will of H. R. Remsen, dec'd, in the sum of ten thousand dollars, which sum of money I hereby promise to pay to the said A. S.
493 Webb, R. L. Belknap, or W. H. Kane, trustee, their successors or assigns, on the first day of July, 1884, with interest thereon at the rate of 8 per cent. per annum from the date hereof until paid, said interest being payable semi-annually on the first day of January & July of each and every year according to the tenor of ten interest notes of $400 each, bearing even date herewith, principal and interest notes payable at the Central National Bank, New York. And if default is made in the

payment of any interest notes or any portion thereof for the space of 30 days after the same becomes due and payable, or in the payment of any taxes assessed against the real estate deeded to secure this loan until the same shall have become delinquent, then all said principal and accrued interest shall, at the option of the said A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, their successors or assigns, become at once due and payable without further notice, and should it become necessary to collect this bond or any interest notes attached hereto by suit, a reasonable amount shall be allowed as att'y's fee, to be taxed as part of the cost. It is expressly declared that this bond and the interest notes attached to the same are given for an actual loan of money for the amount of ten thousand dollars, and are secured by a first and only deed of trust of this amount on real estate situated in Caldwell County and State of Mo., which deed of trust is duly recorded.

Dated at Corning, in the county of Adams & State of Iowa, on the 1st day of July, 1879.

PATRICK S. KENNEY.

Copy of coupon No. 2.

$400.00.] CORNING, IOWA, *July 1st*, 1879.

494 On the first day of July, 1879, for value received, I promise to pay to the order of A. S. Webb, R. L. Belknap, or W. H. Kane, trustee, at Central National Bank, New York, for interest due on that day according to the tenor of a bond of $10,000 of even date herewith, this note to draw interest at ten per cent. after maturity until paid, and is secured by trust-deed previously recorded.

P. S. KENNEY.

No. 6018.]

There are eight other notes just like the one set out above except as to date, and numbered 3, 4, 5, 6, 7, 8, 9, 10.

No. 3	is	dated	Corning,	July	1st,	1879.	Due	*July* 1st, 1881.
" 4	"	"	"	"	"	"	"	July 1, 1881.
" 5	"	"	"	"	"	"	"	Jan. 1, 1882.
" 6	"	"	"	"	"	"	"	July 1, 1882.
" 7	"	"	"	"	"	"	"	Jan. 1, 1883.
" 8	"	"	"	"	"	"	"	July 1, 1883.
" 9	"	"	"	"	"	"	"	Jan. 1, 1884.
" 10	"	"	"	"	"	"	"	July 1, 1884.

A. S. WEBB, R. L. BELKNAP, and W. H. KANE, trustees under the will of H. R. Remsen, deceased,

against

PATRICK S. KENNEY & ELIZABETH KENNEY.

In the circuit court of the State of Mo. in & for Caldwell County for Feb'y term, 1881.

The plaintiffs state:

1. That they are the duly qualified and acting trustees appointed by the

will of H. R. Remsen, deceased, who departed this life prior to the first day of July, 1879, at County, in the State of New York.

2. That heretofore, to wit, on the said 1st day of July, A. D. 1879, the said defendants, Patrick S. Kenney, made unto these plaintiffs as trustees aforesaid his certain promissory note or farm bond for the sum of ten thousand dollars, with interest from said date at the rate of eight per cent. per annum, payable semi-annually, and to become due July 1st, 1884. A copy of which, together with the interest coupons thereon, is hereto attached, marked "Exhibit A," & made a part hereof.

2d. That is expressly agreed by the terms of said promissory note that if said defendant fail to pay any of the interest aforesaid when the same becomes due for the space of thirty days after the same has become due and payable, or if he fails to pay any tax or taxes assessed against or on the real estate hereinafter referred to until the same becomes delinquent, the whole amount of said note, both principal and interest, shall, at the option of plaintiffs, become due and payable at once.

3. That is further expressly agreed and provided in and by the terms of said promissory note, that should it become necessary to collect the same or any part the interest thereon by suit that a reasonable amount shall be allowed as attorney's fees to be taxed as part of the costs.

4. That said note was given to the plaintiffs for an actual loan to said defendant of ten thousand dollars of the funds of the estate of said Remsen, deceased, and which plaintiffs held as trustees as aforesaid.

5. That for the purpose of securing the payment of said note the said defendants, Patrick S. Kenney and Elizabeth Kenney, made unto Lew E. Darrow, trustee, a deed of trust covering the following real estate, to wit: The south half of section three (3); the south half of section four (4); the northeast quarter of the northeast quarter, and the west half of 496 the northeast quarter, and the east half of the northwest quarter, and the northwest quarter of the southeast quarter of section nine (9); the north fourth and the southeast quarter of the northeast quarter of section ten (10), all in township fifty-seven (57) north, of range twenty-nine (29) west, in Caldwell County and the State of Missouri. That said deed of trust was made for the benefit of these plaintiffs and to secure to them the payment of said promissory note; that the same was filed for record on the 6th day of August, 1879, in the office of the clerk of the circuit court and ex officio recorder of said Caldwell County, and was duly recorded on page 208 of book O of the proper records of said county.

5. That it is expressly agreed and stipulated in said deed of trust that if said Patrick S. Kenney shall fail to pay any part of the interest when the same becomes due, and shall permit the same to remain due and unpaid, then the whole amount, principal and interest, of said bond may and shall, at the option of plaintiffs, 'come due and payable, and should the taxes on and against said real estate become due and remain unpaid until they shall become delinquent then plaintiffs may exercise the same option; and

6. That it is further expressly printed in said deed of trust that if it become' necessary to collect said bond or any of the interest by suit, or should the legal holder of said bond or the interest notes elect so to collect, then a reasonable atty's fee shall be allowed, and in that behalf shall be taxed as part of the costs of this proceeding.

7. That each installment of interest is evidenced by a note made to pl'ffs therefor by said defendants Patrick S. Kenney.

497 Plaintiffs also attach hereto and mak' part hereof a copy of said trust deed which is marked "Exhibit B."

8. Plaintiffs aver that said Patrick S. Kenney has made default in the payment of the interest due on said promissory note or bond.

That on the first day of July, 1880, there became due and payable interest coupon No. 2 for the sum of four hundred dollars, which said defendant failed and refused & still fails and refuses to pay, and that the same is wholly due and remaining unpaid.

That in each pay'ent of interest in each interest coupon or note it is agreed that if the same is not paid when due then the same shall draw ten per cent. interest from maturity.

9. That plaintiffs elect to declare the whole amount of said bond or promissory note and the interest thereon to be due and payable, and to proceed to collect the same, and that prior to the commencement of this action they notified said defendants of that fact, and thus they do because of the failure of defendants to pay said interest as he should have done; they are unable now to state whether or not said defendant has paid his taxes or has permitted them to become delinquent, but they will plead further as to this fact when they are sufficiently informed.

10. That there should be allowed to them the sum of seven hundred & fifty dollars reasonable attorney's fees, and they claim that sum on that account.

They therefore demand judgment against said Patrick S. Kenney for the full sum of ten thousand dollars, with interest as provided in said bond and coupons, and the further sum of seven hundred & fifty dollars attorney's fees, and the costs of this suit.

498 And they pray for foreclosure of said deed of trust and that special execution may issue for the sale of said premises or so much thereof as may be necessary to satisfy said judgment, interest, and costs, and for general execution against the property of said Patrick S. Kenney for any sum remaining due and unpaid after exhausting the said real estate, and for such other and further relief as may to your honor seem meet and the nature of this case may require.

STUART BROS.,
Att'ys for Pl'ffs.

Certificate to copy of petition.

STATE OF MISSOURI,
County of Caldwell, ss:

I do hereby certify that the foregoing is a true copy of the original petition now on file in my office in the above-entitled cause.

Given under my hand and official seal at office in the town of Kingston in said county this 23rd day of November, 1880.

[SEAL.] WINFIELD MILLER, *Clerk.*

Summons.

In the circuit court.

STATE OF MISSOURI,
County of Caldwell, ss:

The State of Missouri to the sheriff of Caldwell County, greeting:

We command you to summon Patrick S. Kenney and Elizabeth Kenney, if they be found in your county, to appear before our circuit court, to be holden within and for the county of Caldwell, at the court-house in the town of Kingston, in said county, on the first day of the next
499 term thereof, to be begun and held on the fourth Monday in February next, A. D. 1881, then and there, before the judge of our said court to answer the petition of A. S. Webb, R. L. Belknap, and W. H. Kane, trustees, &c., (a certified copy of which petition is hereto annexed). And have you then and there this writ with the return of your action thereupon.

Witness my hand as clerk of our said court and the seal thereof. Done at office in Kingston, in the county aforesaid, on the 23d day of November, A. D. 1880.

[SEAL.] WINFIELD MILLER, *Clerk.*

Certificate to copy of summons.

STATE OF MISSOURI,
County of Caldwell, ss:

I do hereby certify that the foregoing is a true copy of the original summons issued in a certain cause in the circuit court of said county, wherein A. S. Webb et al. are plaintiffs and P. S. Kenney et al. are defendants.

Given under my hand and official seal at office in the town of Kingston, county and State aforesaid, on this 23d of November, A. D. 1880.

[SEAL.] WINFIELD MILLER, *Clerk.*

500 EXHIBIT B.

Deed of trust.

This deed, made and entered into this first day of July, eighteen hundred and seventy-nine, by and between Patrick S. Kenney & Elizabeth Kenney, husband and wife, of the county of Caldwell, State of Missouri, parties of the first part, David W. McNair, of the county of Adams, State of Iowa, party of the second part, and Geo. W. Frank and Darrow, of the county of Adams, State of Iowa, parties of the third part, witnesseth:

That said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and the sum of one dollar to them paid by the said party of second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey, and confirm unto the said party of second part, subject to a deed of trust this day executed to Lew E. Darrow, trustee for A. S. Webb, R. L. Belknap, or W. H. Kane, trustees, the following-described real estate, lying

and being in the county of Caldwell and State of Missouri, to wit: The south half of section three (3), the south half of section four (4), the north-east fourth of the northeast quarter, the east half of the northwest quarter, and the northwest fourth of the southeast quarter of section nine (9), the north fourth and the southeast fourth of the northeast quarter of section ten (10), all in township fifty-seven (57) north, of range twenty-nine (29) west, containing in all ten hundred and eighty (1080) acres by Government survey, to have and to hold the same, with the appurtenances, to the party of the second part, and to his successor or successors in this trust, and to him and his grantees and assigns forever; in trust, however, for the following purposes:

Whereas the said Geo. W. Frank & Darrow, as the agents of
501 Patrick S. Kenney have, at his request, negotiated and procured for him a loan of ten thousand (10,000) dollars from A. S. Webb, R. L. Belknap, or W. H. Kane, trustees; and whereas the said Patrick S. Kenney has agreed to pay and is justly indebted to the said Geo. W. Frank & Darrow for such services in the sum of one thousand dollars to be paid in ten equal semi-annual payments of one hundred dollars each on the first day of January and July of each and every year, and to bear interest at the rate of ten per cent. per annum after maturity, until paid, according to the tenor and effect of ten promissory notes this day executed and delivered by the said Patrick S. Kenney to the said Geo. W. Frank & Darrow, payable at their banking house in Corning, Iowa. Now, therefore, if the said parties of the first part or any one for them shall well and truly pay off and discharge the debt and interest expressed in the said promissory notes and every part thereof when the same becomes due and payable, according to the true tenor and effect of said promissory notes, then this deed shall be void and the property herein before conveyed shall be released at the cost of the said parties of the first part; but should the said parties of the first part fail or refuse to pay the said debt or the said interest, or any part thereof, when the same shall become due and payable according to the true tenor, date, and effect of said promissory notes, or should the said parties of the first part fail or refuse to pay all taxes or assessments, ordinary or extraordinary, until the same shall have become delinquent, which are now or may hereafter be assessed upon the property aforesaid during the continuance of this loan, then the whole of said principal and accrued interest shall, at the option of the legal holder of said promissory notes, become at once due and payable and this deed shall remain in force and said party of
502 the second part at the request of the legal holder of the said promissory note may enter into possession of the property hereinbefore described and sell the same, or any part thereof, at public vendue, to the highest bidder, at the court-house door, in the town of Kingston, Caldwell County, Missouri, for cash, first giving thirty days' public notice of the time, terms, and place of sale, and of the property to be sold by advertisement in some newspaper printed and published in the county of Caldwell, Missouri, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale; and any statement of facts or recital by the said trustee in relation to the non-payment of the money secured to be paid the advertisement, sale, receipt of the money and the execution of the deed to the purchaser shall be received as prima facie evidence of such facts; and such

trustee shall, out of the proceeds remaining over to the payment of said debt and interest, and to the payment of any taxes or assessments due at time of said sale upon the premises aforesaid, or upon such part thereof as may be sold for the purpose of executing this trust, and the remainder, if any, shall be paid to the said parties of the first part or their legal representatives; and in case the said promissory notes and accrued interest at the time of sale, together with delinquent taxes and assessments and all cost and reasonable expenses of executing said trust, shall be paid by the sale of part of the premises aforesaid, then the title to and the right of entry upon the unsold residue of the premises aforesaid shall vest absolutely in the said parties of the first part, and the said unsold residue shall be fully discharged from all liens created by the trust aforesaid at the cost of the said parties of the first part; and it is stipulated and agreed
503 by the said parties 'f the first part that in case the said party of the second part, by reason of absence, death, refusal to act, or disability in any wise, should fail to perform this trust as herein provided, then the said Geo. W. Frank & Darrow, or the legal holder of the said promissory notes, shall have the option of substituting any other person in his stead; and the said party so substituted shall have the same power as the trustees herein before, and the acts and doings of said party substituted shall be as effectual and binding upon all parties as if performed by the said party of the second part. And it is further agreed by the parties of the first part that should it become necessary to collect the said promissory notes, or any of them, by suit, or should the legal holder of the said promissory notes, or any of them, by suit, or should the legal holder of the said promissory notes elect to collect, thus and in that case a reasonable attorney's fee for collecting the same *it* shall be allowed, to be taxed as part of the costs in the suit, and the said parties of the second part covenants faithfully to perform and fulfill the trust herein created, not being liable for any mischance occasioned by others.

In witness whereof the said parties have hereunto set their hands and seals the day and year first-above written.

PATRICK S. KENNEY.
ELIZABETH KENNEY.
DAVID W. McNAIR.

STATE OF MISSOURI,
County of Caldwell, ss:

Be it remembered that on this 6' day of August, A. D. 1879, before the undersigned, a notary public, within and for the county of Caldwell and State of Missouri, personally came Patrick S. Kenney, and Elizabeth Kenney, his wife, who are both personally known to me to be
504 the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and acknowledge that they executed the same for the purposes therein mentioned; and the said Elizabeth Kenney being by me first examined, separate and apart from her husband, and made fully acquainted with the contents of the said instrument, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband. I' testimony whereof I have here-

unto set my hand and affixed my official seal of my office in Kidder, the day and year first above-written.

I qualified as notary public Feb. 3rd, 1877, and my commission expires Feb. 3rd, 1883.

A. W. RICE,
Notary Public.

EXHIBIT A.

Copy of coupon No. 2.

$100.00.] CORNING, IOWA, *July 1st*, 1879.

On the first day of July, 1880, for value received, I promise to pay to the order of Geo. W. Frank & Darrow, at their banking house in Corning, Iowa, one hundred dollars. This note to draw interest at ten per cent. after maturity until paid, and is secured by a mortgage properly recorded. And I agree also to pay a reasonable attorney's fee if this note is collected by suit.

P. S. KENNEY.

No. 6018.]

There are eight other notes like the one set out above, except as to dates, and numbered 3, 4, 5, 6, 7, 8, 9, 10.

No. 3 is dated Corning, July 1st, 1879, & is due Jan. 1st, 1881.
" 4 " " " " " " " July 1st, 1881.
" 5 " " " " " " " Jan. 1st, 1882.
" 6 " " " " " " " July 1st, 1882.
" 7 " " " " " " " Jan. 1st, 1883.

505 No. 8 is dated Corning, July 1st, 1879, and is due July 1st, 1883.
No. 9 is dated Corning, July 1st, 1879, & is due Jan. 1st, 1884.
No. 10 is dated Corning, July 1st, 1879, and due July 1st, 1884.

In the circuit court of Caldwell County, Missouri, Feb'y term, 1881.

GEO. W. FRANK & DARROW
vs.
PATRICK S. KENNEY AND ELIZABETH KENNEY,
The Daviess County Savings Association.

To said court:

Your petitioners, Geo. W. Frank & Darrow, represent to your honor, first, that heretofore, to wit, on or about the first day of July, 1879, the said defendant Patrick S. Kenney executed and delivered to Geo. W. Frank & Darrow his promissory notes for the sum of one hundred dollars each, the last of said notes payable five years after date, with interest thereon at the rate of ten per cent. per annum after maturity till paid, said notes being made payable semi-annually on the first day of January and July of each year, all of which will more fully appear by reference to a copy of said notes which is hereto attached, marked "Exhibit A," and made a part hereof.

Second. That said note expressly provides that if default be made in the

payment of any of said notes, & interest which may accrue thereon, for the space of thirty days after the same becomes due and payable, or in the payment of any taxes assessed against the real estate deeded in trust to secure said notes, and the same shall have become delinquent, then all the principal and accrued interest shall, at the option of the owner of said notes, become due and payable without further notice.

506 Third. That said notes contains the further express stipulation that if it should become necessary to collect said notes or bond, or any interest that might accrue thereon, by suit, then a reasonable amount shall be allowed and collected thereon as attorney's fee, to be taxed as part of the costs.

Fourth. Petitioner further states that for purposes of securing the payment of said notes the said defendant' Patrick S. Kenney & Elizabeth Kenney, at or about the date of said notes, executed and delivered to David W. McNair deed of trust of the following-described real estate, situated in Caldwell County, in the State of Missouri, to wit: The S. half sec. 3; the S. half sec. 4; the NE. fourth NE. fourth, the W. half NE. fourth, the E. half NW. fourth, & the NW. SE. fourth sec. 9; the N. fourth & the SE. fourth NE. sec. 10, all in township 57 N., of range 29 west, containing in all ten hundred and eighty acres by Government survey; all of which will more fully appear by reference to a copy of said deed of trust which is hereto attached, marked "Exhibit B," and made a part hereof.

Fifth. That said mortgage also contains the following provisions: That in case of the non-payment of the said interest or principal, or any part thereof, for the space of thirty days after the same becomes due, or in the non-payment of any taxes assessed against the real estate herein mortgaged until the same shall have become delinquent, or in case any statement herein shall prove untrue, then the whole sum, principal and interest, shall become due and payable, and the mortgage may be, at the option of the mortgagee or owner, foreclosed at once; and it is further agreed that if it becomes necessary to foreclose this mortgage a reasonable amount shall be allowed as attorney's fees and be taxed as part of the costs of foreclosing.

507 Sixth. That said mortgage was duly filed for record in the office of the recorder of deeds of Caldwell County, Missouri, on the 6th day of July, 1879, at 1.56 o'clock p. m., and duly recorded in book O, page 210.

Seventh. Petitioner further states that the said defendants have failed to comply with the terms of said notes and deed of trust; that they have failed to pay the interest on said note when it become due; that petitioner is the owner of said note and deed of trust, and that there is now due and payable thereon the sum of nine hundred dollars, as principal, and interest thereon at the rate of ten per cent. per annum from the first day of July, 1880, on one note of $100, and hence it becomes necessary to collect the same by suit, and petitioner is entitled to a reasonable attorney's fee for the collection thereof, which he avers to be the sum of one hundred and fifty dollars.

Eighth. Petitioner further states that he has been informed that the defendants Elizabeth Keney and the Daviess County Savings Association, which said association is a corporation *is a corporation* duly organized under the laws of the State of Missouri and doing business in said State,

claim some interest in or lien upon said mortgaged premises; but petitioner says that whatever interest in or lien upon said premises either of said defendants may have it is junior and inferior to plaintiff's said deed of trust lien thereon.

Ninth. Plaintiff therefore demands judgment against the said defendant Patrick S. Kenney for the said sum of nine hundred dollars, and interest thereon at the rate of ten per cent. per annum from the first day of July, 1880, on $100, and the costs of this suit, including an attorney's fee of one hundred dollars, and that a decree be entered in plaintiff's favor foreclosing his said deed of trust; that a special execution issue for the
508 sale of said mortgaged premises, and that a general execution issue against the property of the defendant Patrick S. Kenney for any balance remaining unpaid after exhausting said mortgaged premises; that all the right, title, interest, and equity of redemption of each and all the above-named defendants in and to said deed of trust premises, or any part thereof, be foreclosed and forever barred, and that their liens thereon, or interest therein, if any they have, be declared junior and inferior to petitioner's said deed of trust lien thereon. And petitioner prays for such other and further relief in the premises as to your honor shall seem meet and the nature of this case may require, including a special direction and authority to the clerk of this court to issue the proper writ to place the purchaser of these lands under the decree in possession thereof in case the same are not redeemed from such sale, as provided by law.

STUART BROS.,
Attorneys for Plaintiff.

I, Lew E. Darrow, do solemnly swear that the matter and things stated in the foregoing petition are true, as I verily believe; that I am one of the members of the firm of Geo. W. Frank & Darrow, who are plaintiffs in this cause, and am acquainted with the matters and things stated in the foregoing petition, having read the same.

LEW E. DARROW.

STATE OF IOWA, *Adams County, ss:*

The foregoing affidavit was subscribed and sworn to before me and in my presence by the above-named affiant, this 27th day of October, 1880.

Witness my hand and official seal.

[SEAL.] W. D. MINOR, JR.,
Notary Public in and for said County.

509 *Certificate to copy of petition.*

STATE OF MISSOURI,
County of Caldwell, ss:

I do hereby certify that the foregoing is a true copy of the original petition now on file in my office in the above-entitled cause.

Given under my hand and seal, at office, in the town of Kingston, in said county, this 23rd day of November, 1880.

[SEAL.] WINFIELD MILLER, *Clerk.*

Summons.

In the circuit court.

STATE OF MISSOURI,
County of Caldwell, ss:

The State of Missouri to the sheriff of Caldwell County, greeting:

We command you to summon Patrick S. Kenney and Elizabeth Kenney, if they be found in your county, to appear before our circuit court to be holden within and for the county of Caldwell, at the court-house in the town of Kingston, in said county, on the first day of the next term thereof, to be begun and held on the 4th Monday in February, 1881, then and there before the judge of our said court to answer the petition of Geo. W. Frank & Darrow (a certified copy of which petition is hereto annexed). And have you then and there this writ, with the return of your action thereupon.

Witness my hand as clerk of our said court, and the seal there'. Done at office, in Kingston, in the county aforesaid, on the 23rd day of November, A. D. 1880.

[SEAL.] WINFIELD MILLER, *Clerk.*

Certificate to copy of summons.

STATE OF MISSOURI,
County of Caldwell, ss:

510 I do hereby certify that the foregoing is a true copy of the original summons issued in a certain cause in the circuit court of said county, wherein Geo. W. Frank & Darrow are plaintiffs and P. S. Kenney and Elizabeth Kenney are defendants.

Given under my hand and official seal, at office, in the town of Kingston, county and State aforesaid, on this 23rd day of November, A. D. 1880.

[SEAL.] WINFIELD MILLER, *Clerk.*

511 ALBERT S. WEBB, ROBERT L. BELKNAP, and WILLIAM H. KANE, trustees under the will of Henry R. Remsen, deceased, plaintiff,

against

ALPHONZO L. MARTIN, SHERIFF OF DAVIESS County, Missouri, and William W. Clevenger, sheriff of Caldwell County, Missouri, and the Daviess County Savings Association of Gallatin, Daviess County, Missouri, defendants.

In the circuit court of Caldwell County, Mo., in vacation, June 16th, 1880.

Plaintiffs state that they are trustees under the will of Henry R. Remsen, deceased, duly qualified and acting as such under the laws of the State of New York; that the defendant Alphonzo L. Martin is the acting sheriff of Daviess County, Missouri, and that the defendant William W.

Clevenger is the acting sheriff of Caldwell County, Missouri, and that the Daviess County Savings Association is a corporation duly organized and doing a general banking business at the city of Gallatin, Missouri, under the act of the general assembly of the State of Missouri approved Feb'y 15th, 1864, entitled "An act to organize savings associations and facilitate exchanges."

Plaintiffs further state that Patrick S. Kenney, of the county of Caldwell, was on the 30th day of June, 1879, largely indebted to the
512 defendant The Daviess County Savings Association, which indebtedness was secured to said association by deeds of trust executed by the said Patrick S. Kenney and Elizabeth, his wife, as follows:

One dated February 8th, 1872, to Marcus A. Low, trustee for Leslie P. Barnum, on the following real estate situate in the county of Caldwell and State of Missouri, to wit: The SE. fourth of section 3, the NW. fourth & the NE. fourth of NE. fourth of section ten, & the N. half of NW. fourth of sec. 9, all in township 57, of range 29, in all 320 acres, to secure the sum of $3,000, at ten per cent. interest, which said indebtedness and trust-deed was then held by the defendant The Daviess County Savings Association as the assignee of said Leslie P. Barnum.

2. One to Cyrus S. McLaughlin, trustee for Solomon Musser, dated Nov. 17th, 1873, on the following real estate, to wit:

The E. half of NW. fourth & the W. half of NE. fourth of section 9, & the S. half of section 4, all in township 57, of range 29, to secure the sum of $2,112.52, and interest at ten per cent., which said indebtedness and trust-deed had been assigned to and was then held by the said Daviess County Savings Association.

3. One dated Dec. 20th, 1873, to John Doolin, trustee for Nicholas Quirk, on the following lands, to wit: The SE. fourth of sec. 3 and the E. half of NE. fourth of sec. 10, all in township 57, range 29, to secure $1,650, and interest at ten per cent., which said trust-deed and debt had also been assigned to and was then held by the said Daviess County Savings Association.

4. One dated August 28th, 1874, to Robert L. Tomlin, trustee for the Daviess County Savings Association, on the following lands, to wit: The
513 S. half of sec. 3 and the S. half of sec. 4, all in township 57, range 29, to secure to said defendant the sum of $5,936.80, and interest at ten per cent.

[One dated Sep. 21st, 1874, to Robt. L. Tomlin, trustee of the defendant The Daviess County Savings Association, on the following lands, to wit: The N. half of sec. 10 & the N. half of sec. 4, township 57, range 29, to secure to said Daviess County Savings Association the sum of $5,792.20, and interest thereon at ten per cent.]

(Leave this out of the cross-bill.)

5. One dated May 24th, 1875, to Robert L. Tomlin, trustee for the defendant The Daviess County Savings Association, on the following lands, to wit: The S. half of sec. 4, and the E. half of sec. 9, and the E. half of NW. fourth of sect. 9, and the N. half and the NE. fourth of NW. fourth of sec. 10, all in township 57, range 29, to secure $8,013.13, and interest at ten per cent., due and payable to said defendant.

And one dated April 1st, 1876, to Wm. C. Gillihan and Samuel T. Brosius, trustees for the defendant The Daviess County Savings Associ-

ation, on the following lands, to wit: S. half sec. 3, & S. half sec. 4, and N. half of NE. fourth and SW. fourth of NE. fourth & E. half of NW. fourth of sec. 9, and the E. half of NE. fourth & NW. fourth of NE. fourth & N. half of NW. fourth of sec. 10, and the S. half of NW. fourth and SW. ¼ of NE. ¼ of section 10, and the NW. ¼ of SE. fourth of sec. 9, all in township 57, range 29, to secure $4,889.65, and interest at ten per cent., then due and payable to said defendant.

All of said land in all of said deeds being in the county of Caldwell, State of Missouri, and all of said trust-deeds being then properly recorded in said county, and at that time existing as valid liens on said lands, and held by and for the benefit of the defendant The Daviess County Savings Association.

That prior to the execution of either of said deeds the said Pat-
514 rick S. Kenney and his said wife executed and delivered unto Thomas Culligan, trustee for James D. Powers, a deed of trust on the S. half of sec. 3 & the E. ½ of the SE. fourth of section 4, 57, 29, aforesaid, to secure a debt of $5,000.00, and ten per cent. interest thereon, which was a senior, prior, and superior lien on the lands therein described to either of the deeds before mentioned of the Daviess County Savings Association, except the trust-deed to M. A. Low, trustee for Leslie P. Barnum; and that on the 5th day of July, 1875, the Exchange Bank of Breckenridge, Mo., obtained two judgments against said Patrick S. Kenney for the aggregate sum of $1,129.95, and ten per cent. interest from that date, which also remained on said June 30th, 1879, a lien prior and superior to the deed of trust aforesaid to William C. Gillihan and Samuel T. Brosius for the benefit of said Daviess County Savings Association.

And on the 1st day of Nov., 1875, one Thomas Ryan also obtained a judgment against said Patrick S. Kenney for the sum of $775.06, which also remained unpaid, and a lien on said lands prior, senior, and superior to the lien of said trust-deed to Wm. C. Gillihan and Samuel T. Brosius, all of said judgments having been rendered by the circuit court of Caldwell County, Missouri.

That on the said 30th day of June, 1879, the said Daviess County Savings Association and Patrick S. Kenney, being desirous of preventing a sale of said lands on said judgments and trusts prior and superior to the trust-deeds then held by said Daviess County Savings Association, and which were being pressed for collection, caused said Kenney to apply through his agents to these plaintiffs for a loan of $10,000, to be secured by deed of trust on all of said lands.

That plaintiffs, at the solicitation of both of said parties, and relying
on their statements, promises, and representations, agreed to loan
515 said Kenney said $10,000.00, with the express agreement and understanding had and made by and between all of said parties that all other liens and incumbrances should be removed, released, and satisfied, and that plaintiffs should have as security for said loan a trust-deed of all of said lands which should be prior, senior, and superior to all of said liens and claims of said defendant The Daviess County Savings Association, and all other liens.

That relying on said agreement and statements and representations of said Daviess County Savings Association and said Kenney, and in pursuance of the same, the plaintiffs did loan to said Patrick S. Kenney the

said sum of ten thousand dollars for the term of five years, at the annual interest of eight per cent.; and at the instance and request of said Patrick S. Kenney and the Daviess County Savings Association, and in pursuance of said agreement, the same was paid and applied as follows, viz: $5,200.00 in satisfaction of the debt secured by the trust-deed to Thomas Culligan, trustee for James D. Power; $1,689.86 in payment and discharge of the three judgments hereinbefore mentioned, and $3,110.14 to the defendant The Daviess County Savings Association; and in pursuance of said agreement the said Daviess County Savings Association formally cancelled and entered satisfaction of record of all of *of all of* said trust-deeds to it belonging, when the same were recorded on the records of Caldwell County, Missouri, and plaintiffs' said deed of trust executed and delivered by said Patrick S. Kenney and wife to Lew E. Darrow, trustee, on all of said lands was filed and properly recorded in the records of deeds of trust of said Caldwell County.

[After which said defendant caused said Patrick S. Kenney to execute and deliver to it his note for the balance due it, viz, about thirty-five thousand dollars, and he and his wife to execute and deliver to it
516 a deed of trust on said land securing said balance, which said deed of trust was executed, filed, and recorded subsequent to the recording of plaintiffs' said deed of trust, and which is still and now held and claimed by said Daviess County Savings Association as its property. And plaintiff further states that said trust-deed expressly provides that it is and shall be secured junior and subject to plaintiffs' said deed of trust.]

NOTE.—Stricken out by circuit court of Caldwell County, Missouri.

That by said transaction each and every one of the debts secured by said trust-deeds, and each and every one of said trust-deeds of the Daviess County Savings Association, as also the other trust-deeds and judgments, were fully paid, cancelled, and satisfied, and were so be treated by all the parties.

But plaintiffs now aver the truth to be that the said Patrick S. Kenney and the said Daviess County Savings Association have confederated and conspired together to swindle and defraud these plaintiffs and to fraudulently disregard their agreement aforesaid, and, in the face thereof and of the fact that plaintiffs fully relied on and accepted their statements and promises, to endeavor by unfair and dishonest means to destroy plaintiffs' said security and make the same inferior to the aforesaid trust-deeds of said Daviess County Savings Association, which it now pretends to hold as valid securities and foreclosure.

[That said Daviess County Savings Association has fraudulently induced said Patrick Kenney to surrender and turn over to it the full and complete possession of all of said lands under said pretended trust-deeds, and that it now holds the same as proprietor thereof, and the said Patrick S.
517 Kenney has only a lease from said Daviess County Savings Association for said land, and made under what he now holds possession.]

NOTE.—Stricken out by Caldwell circuit court.

That said savings association is proceeding to sell said lands under each and all of said pretended deeds of trust, and has advertised the said sales as follows:

Under the deed to Marcus A. Low, for the benefit of Leslie P. Barnum, at Kingston, Caldwell County, Mo., on Aug. 28th, 1880.

Under the deed to Cyrus S. McLaughlin, trustee for Solomon Musser, at Kingston, Caldwell County, Mo., on June 19th, 1880.

Under the deed to John Doolin, trustee of Nicholas Quirk, at same place; and on Aug. 28th, 1880.

Under the deeds of Robt. L. Tomlin, trustee of said defendant, dated Aug. 28th, 1874, at same place, on June 19th, 1880.

Under the deed to Robt. L. Tomlin, May 24, 1875, at same place, on July 31st, 1880.

And under the deed to William C. Gillihan and Samuel T. Brosius, at Gallatin, Daviess County, Missouri, on the 22d day of June, 1880. Notices of said sales are attached as Exhibits A, B, C, D, & E, & F, and made part hereof, and unless restrained sales will take place, one of them very soon, and at a place where purchasers cannot examine the records as to the title of said lands, it being in a different county, and this deprives plaintiffs of their rightful security and cause them to suffer great and irreparable damage, for which they have no adequate remedy at law.

NOTE.—Parts contained in brackets made by ink are stricken out.

That said Daviess County Savings Association now claim that said deeds of trust have never been and are not now satisfied and released in fact, but the same are still a lien valid and binding on all of said lands.

That said association having authorized and empowered Robt. L.
518 Tomlin, its cashier, to cancel and release said deeds of trust, and he having fully released and cancelled the same in pursuance of the agreements, promises, and understanding aforesaid, now claims and holds that said Robt. L. Tomlin, cashier of said association, acted beyond his power and authority in releasing and satisfying said deeds of trust, and that his act in so doing is null and void and of no effect.

That if said sales are permitted to take place they will cast a cloud over plaintiffs' title to and interest in said land, and will cause endless and expensive litigation.

[That persons entirely innocent of the rights and interests of plaintiffs may buy said lands at said sales and may thus become uselessly and wrongfully involved in great trouble and litigation and be put to great expense.]

NOTE.—Stricken out by Caldwell circuit court.

That if said defendant The Daviess County Savings Association is permitted to proceed with said sales, and to thus cast a cloud on plaintiffs' title and interest in said land, it will be impossible for the trustee under their trust-deed to sell the same and realize the money due or to become due to plaintiffs, or for plaintiffs by any other means to protect themselves and secure payment of the debt, and thus there will be done against plaintiffs a great legal wrong, for which they have no adequate remedy by an action for damages.

That the said Daviess County Savings Association have enjoined secrecy on a part of the trustees in said deeds of trust as to the sales that it is now trying fraudulently and wrongfully to make thereunder and in which said trustees refused to act; and that it requested said trustees not to inform plaintiffs, who are non-residents of this State and live in
519 the State of New York, of these proceedings aforesaid, thus attesting its design and willingness to overreach and circumvent plaintiffs and defraud them of their rights.

They therefore seek to bring all the parties interested in this matter

before this court, that the interests of each may be ascertained and settled.

[That said Daviess County Savings Association and said Patrick S. Kenney still retain the ten thousand dollars loaned by plaintiffs, and have not offered to repay the same or any part thereof.]

NOTE.—Not stricken out.

[And the said Daviess County Savings Association still retains the deed of trust and note of $36,680.30 made to it by said Kenney and wife.]

NOTE.—Stricken out.

NOTE.—Stricken out by the Caldwell circuit court.

[And there has been no offer on the part of either of them to rescind said agreement or return to plaintiffs their money; and plaintiffs aver that this alone is a fraud in law against them, and attests the bad faith of the said Daviess County Savings Association, and entitles plaintiffs to the relief that they will pray herein.]

That the said Patrick S. Kenney is still indebted to the said Daviess County Savings Association in said sum of $36,680.30, less a payment of about three thousand dollars, and to these plaintiffs in the sum of $10,000.00, with a large amount of interest on both, and that he is insolvent, and a suit at law against him would be unavailing.

That the entire capital stock of the Daviess County Savings Association amounts to five thousand dollars only, while it has interested in these lands alone over thirty thousand dollars, and will have over forty-six thousand dollars interested therein when it redeems from plaintiffs said trust-deed.

520 The said trust-deed of plaintiffs is not in default, and they cannot proceed to protect themselves by action of ejectment or any remedy at law.

[That just after executing and delivering to plaintiffs their said deed of trust, and prior to the execution of the deed of trust to the said Daviess County Savings Association, the said Patrick S. Kenney and wife executed and delivered unto David W. McNair, trustee for Geo. W. Frank and Darrow, a deed of trust on all of said lands to secure the sum of $1,000, which said Kenney was to pay said Geo. W. Frank and Darrow for their services in negotiating said loan for him, and plaintiffs ask that said Geo. W. Frank and Darrow be made parties defendant hereto, and required to plead that all questions and rights may be settled and disposed of this case.]

NOTE.—Stricken out by Caldwell circuit court.

That the defendants Alphonzo L. Martin and William W. Clevenger, and acting as the trustee of said Daviess County Savings Association, the original trustees have refused to act, and that said parties have no other interest in this case.

Plaintiffs pray that the said defendants, and each of them, and all others who may be called upon to act, may be forever enjoined from selling under each and all of said deeds of trust, and from proceeding further in any manner to foreclose the same, and that a temporary injunction issue to restrain them until the final hearing of this cause.

That each of said pretended trust-deeds be declared satisfied and cancelled and forever held for nought, and that plaintiffs' said trust-deed be

established as a first lien on all of said lands, superior, prior, and senior to pretended liens, rights, and interests of said Daviess County Savings Association in, to, or upon said lands or any part thereof.

521 And for such other and further relief as shall upon honor seem equitable and just, including the holding of said defendant The Daviess County Savings Association to a specific observance & performance of its contract.

Plaintiffs ask judgment for costs.

STEWART BROS., AND
GILLIHAN & BROSIUS,
Att'ys for Plaintiffs.

I, Lew E. Darrow, on my oath say that I have heard read the foregoing petition, and am acquainted with all the statements, allegations, and facts therein contained; that I acted as one of the agents of the said Patrick S. Kenney in negotiating the said loan of $10,000, and that I was intimately acquainted with all the facts and circumstances connected with the making of said loan, and the arrangement for a first lien on said lands for the security thereof.

I further say that the statement and allegations contained in the foregoing petition are true.

LEW E. DARROW.

STATE OF MISSOURI,
County of Livingston, ss:

The foregoing affidavit was subscribed in my presence and sworn to before me on this 17th day of June, 1880.

FRANK SHEETZ,
Notary Public.

Sheriff's sale as trustee.

Whereas Patrick S. Kenney and Lizzie Kenney, his wife, by their certain deed of trust dated August 28th, 1874, and recorded in the recorder's office of Caldwell County, Missouri, in book K, at page 67, conveyed to Robt. L. Tomlin, as trustee, the following-described lands situate in Caldwell County, Missouri, to wit:

522 The south half of section No. three (3) and the south half of section No. four (4), all in township No. fifty-seven (57), range No. twenty-nine (29), containing 640 acres, which said conveyance was made in trust to secure the payment—

(Writing is here defaced so that it cannot be read by the copyist.)
more fully described; and whereas said note is now past due, and remains unpaid; and whereas said Robert L. Tomlin refuses and declines to act as trustee for the sale of said lands, whereby I, the undersigned sheriff of Caldwell County, Missouri, have become his successor to the title of said property, and—
in trust for the purposes—
of said deed of trust, and—
ers, duties, and obligations—
(All the rest is so defaced that it cannot be read by copyist.)

Finish.

523 And the following affidavit of R. L. Tomlin was also introduced:

STATE OF MISSOURI,
County of Daviess, ss:

Robert L. Tomlin, being duly sworn according to law, upon his oath states:

I am the person who gave my deposition before Boyd Dudley, notary public, on the 15th day of August, 1881, at Gallatin, Missouri, to be used in evidence in a cause pending in the United States circuit court, western division western district of Missouri, wherein Albert S. Webb et al. are plaintiffs and Alphonzo L. Martin et al. are defendants. A blank was left in said deposition at the adjournment at dinner hour, as to the amount of money deposited in the bank of the Daviess County Savings Association on or about the 6th day of August, 1879, by the county of Daviess, with the understanding that I should go and look at the books of the said bank and fill up said blank after dinner. Through an oversight of myself and the notary this blank was not filled when my examination was completed in the afternoon. I have examined the books of the bank, and find that the amount on deposit to the credit of the county of Daviess on said date was six thousand dollars. I make this affidavit in order that said blank may be filled up in said deposition with the foregoing amount.

ROBERT L. TOMLIN.

Subscribed and sworn to before me at my office in Gallatin, Mo., this 21st day of October, 1881.

[SEAL.]

BOYD DUDLEY,
Notary Public.

And afterwards, on the 12th day of December, 1881, in vacation of said court, the following entry appears on the order-book, to wit:

524 D. A. GLENN ET AL. *against* A. S. WEBB ET AL. } 336.

AND

A. S. WEBB ET AL. *against* A. L. MARTIN ET AL. } 337.

This day there is received and filed herein a bond for appeal in the above cause in the sum of twenty thousand dollars ($20,000), with James H. B. McFerran, James Hemry, and John A. Tuggle as sureties; and it ordered by the honorable Arnold Krekel, judge, at chambers, that said bond be approved and filed and made a part of the record herein, which is accordingly done. It is further ordered that said bond stand for an act as a supersedeas of the decree in the above cause. It is further ordered that the appeal herein prayed be granted.

In the circuit court of the United States for the western division of the western district of Missouri, of the October term, 1881.

DAVID A. GLENN, SHERIFF OF CALDWELL County, Missouri; George Crozier, sheriff of Daviess County, Missouri; and The Daviess County Savings Association of Gallatin, Missouri, plaintiffs,

against

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remson, deceased, and Lew
525 E. Darrow, trustee, and George W. Frank, Lew E. Darrow, and David W. McNair, trustee, defendants.

AND

ALBERT S. WEBB, ROBERT L. BELKNAP, AND William H. Kane, trustees under the will of Henry R. Remsen, deceased, plaintiffs,

against

ALPHONSO L. MARTIN, SHERIFF OF DAVIESS County, Missouri; William W. Clevenger, sheriff of Caldwell County, Missouri; and the Daviess County Savings Association of Gallatin, Daviess County, Missouri, defendants.

Know all men by these presents that we, the Daviess County Savings Association, Alphonso L. Martin, and William Clevenger, as principals, and James H. B. McFerran, James Hemry, and John A. Tuggle, as securities, are held and firmly bound unto Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, dec'd, Lew E. Darrow, George W. Frank, and David W. McNair, in the sum of twenty thousand dollars, for the payment of which we hereby bind ourselves, our heirs, executors, and administrators.

Upon the condition following, however: That whereas Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, dec'd, and Lew E. Darrow, George W. Frank, and David W. McNair have in the circuit court of the United States for the western division of the western district of Missouri certain causes therein pending entitled David A. Glenn and others against Albert S.
526 S. Webb and others, and Albert S. Webb and others against Alphonso L. Martin and others, and which said causes by the stipulation of the parties thereto and the order of court, consolidated for hearing and decree, recovered a judgment against the said Alphonzo L. Martin, William W. Clevenger, and the Daviess County Savings Association of Gallatin, Missouri;

And whereas the above-named Alphonso L. Martin, William Clevenger, and the Daviess County Savings Association of Gallatin, Missouri, have, according to law, been granted an appeal from the judgment and decree of the said circuit court to the Supreme Court of the United States:

Now, therefore, if the said Alphonso L. Martin, William W. Clevenger, and the Daviess County Savings Association shall prosecute their appeal with due diligence to a decision in the Supreme Court, and to effect, and answer all damages and costs if they fail to make good their plea, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

In testimony whereof we have hereunto set our hands and seals this 10th day of December, in the year of our Lord one thousand eight hundred and eighty-one.

THE DAVIESS COUNTY
SAVINGS ASSOCIATION, [SEAL.]
By JAMES HEMRY, *President.* [SEAL.]
WILLIAM W. CLEVENGER, [SEAL.]
Late Sheriff of Caldwell Co.
A. L. MARTIN, [SEAL.]
Late Sheriff of Daviess County.
JAMES H. B. McFERRAN. [SEAL.]
JAMES HEMRY. [SEAL.]
JOHN A. TUGGLE. [SEAL.]

Approved.

A. KREKEL, *Judge.*

527 STATE OF MISSOURI,
County of Daviess, set.:

To all whom it may concern:

We, the undersigned, sheriff and clerk of the county court of the county of Daviess aforesaid, certify that James Hemry owns property in said Daviess Co., and we are well acquainted with his financial condition, and believe him to be worth, over and above all liabilities, at least fifty thousand dollars in money and property.

That John A. Tuggle is a resident of said Daviess County, and we are well acquainted with his financial condition, and believe him to be worth, over and above all liabilities, at least thirty thousand dollars in money and property. That James H. B. McFerran is a resident of Colorado Springs, Colorado, and owns monied interest and real estate in said Daviess County, Mo., of the value of at least ten thousand dollars, and from reliable information we believe said McFerran is worth in State Col., over and above all liabilities, at least fifty thousand dollars in money and property.

Given at city of Gallatin, in county and State aforesaid, December 24th, A. D. 1881.

P. R. DUNN, *County Clerk.*
GEORGE T. CROZIER, *Sheriff.*

528 And afterwards, to wit, on the 23rd day of January, 1882, the following stipulation was filed, to wit:

UNITED STATES OF AMERICA:

In the United States circuit court within and for the western division of the western district of Missouri, at Kansas City, Missouri.

ALBERT S. WEBB ET AL.
vs.
THE DAVIESS COUNTY SAVINGS ASSOCIATION et al., defendants. } In equity.

CONSOLIDAED WITH

THE DAVIESS COUNTY SAVINGS ASSOCIATION et al., complainants,
vs.
ALBERT S. WEBB ET AL., LEW E. DARROW et al., defendants. } In equity.

October term, A. D. 1881.

Upon the trial of this cause James H. B. McFerran was duly sworn in open court to testify as a witness in relation to certain alleged mistakes in dates in his deposition on file in this cause as evidence, and testified as follows:

That where the following paragraph occurs in said deposition, in answer to interrogatory three: "I was also president of said association from its organization until about the first day of January, A. D. 1880," that said date is a mistake, and the date should be "about the first day of January, A. D. 1879," and the deposition should be so amended. And that where the following paragraph occurs in said deposition, in answer to interrogatory five, where it occurs in said answer "and president until Jan. 1st, 1880," the date should be "January 1st, 1879" instead of "1880," and the figures 1880 occurs there as in answer to interrogatory three and six, through inadvertance and mistake; and the depo-
529 sitions should be reformed and corrected accordingly.

And that where the following paragraph occurs in said deposition, in answer to interrogatory six in said deposition: "James Henry succeeded me on or about the 1st day of January, A. D. 1880," the foregoing date should be "on or about the 1st day of January, A. D. 1879," instead of "the first day of January, 1880," and that the date contained in the deposition is a mistake, and should be reformed and corrected to read 1879 instead of 1880 in each of said answers.

It is hereby stipulated and agreed by and between the parties that this statement may become a part of the record in this cause, as containing the evidence given as aforesaid upon the trial by the said McFerran.

January , 1882.

JAMES H. B. McFERRAN,
Att'y for Appellants.
STUART BROS.,
Att'y for Appellees.

531 UNITED STATES OF AMERICA, *sct:*

I, Henry C. Geisberg, clerk of the circuit court of the United States for the western division of the western district of Missouri, do hereby certify that the foregoing is a true transcript of record in the cause therein named as fully as the same appears in my office.

Witness my hand as clerk and the seal of said court. Done at office, in Kansas City, Missouri, this 30th day of June, A. D. 1882.

[SEAL.] H. C. GEISBERG, *Clerk*,
By WARREN WATSON, *D. C.*

(Indorsed:) No. . United States circuit court western division of the western district of Missouri. , plaintiff, against , defendant. Certified copy of the in the above-entitled cause. Fee, .

(Indorsement on cover:) No. 801. Alphonso L. Martin, sheriff, &c., William W. Clevenger, sheriff, &c., and the Daviess County Savings Association of Gallatin, Missouri, appellants, vs. Albert S. Webb, Robert L. Belknap, and William H. Kane, trustees under the will of Henry R. Remsen, deceased, Lew. E. Darrow, George W. Frank, & David W. McNair. W. Missouri C. C. U. S. Filed 29th November, 1882.

1107

FILED
OCT 17 1887

IN THE

Supreme Court of the U. S.

Alphonso L. Martin and others, Appellants,

vs.

Albert S. Webb and others, appellees.

BRIEF OF

HUNTON & CHANDLER,

For Appellants.

HENKLE & POLKINHORN, PRINTERS' 1010 AND 1012 PENN. AVE.

Supreme Court of the U. S.

ALPHONSO L. MARTIN *et. al., Appellants,*

vs.

ALBERT S. WEBB *et. al., Appellees.*

ON APPEAL TO SUPREME COURT OF THE UNITED STATES FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

The appeal in this case is from the decision of the Circuit Court of the United States in two cases—Nos. 337 and 336, which were by consent of the parties consolidated and heard together.

The first was commenced in the Circuit Court of Caldwell County, Missouri, on the 17th day of June, 1880, by Albert S. Webb, Robert L. Belknap, and Wm. H. Kane, Trustees under the will of Henry R. Remsen, against Alphonso Martin, Sheriff of Daviess County, Missouri; Wm. V. Clevenger, Sheriff of Caldwell County, Missouri, and the Daviess County Saving Association, of Gallatin, Daviess County, Missouri, defendants.

The object of this suit was to enjoin the two sheriff defendants as Trustees, and the Daviess County Saving Association as beneficiaries, from selling under sundry deeds of trust from Patrick S. Kenny and wife, to secure certain debts held by said association, and conveying all his lands, on the ground that said deed of trust had been satisfied and released, and that the plaintiffs had the first lien by deed of trust on said lands. On the 1st day of March, 1881, this cause was removed to the Circuit Court of the United States for the Western District of Missouri.

No. 336 was a suit brought by David A. Glenn, acting Sheriff of Caldwell County, Missouri; George T. Crozier, acting Sheriff of Daviess County, Missouri, and the Daviess County Saving Association, plaintiffs, against Albert S. Webb, Robert L. Belknap, and Wm. H. Kane, Trustees under the will of Henry Remsen, deceased, and Lew. E. Darrow, as Trustee, and George W. Frank and Darrow, and David W. McNair, as Trustee, defendants.

The object of this suit was to enjoin and restrain the defendants from prosecuting their suits to foreclose their respective deeds of trust, and from selling said land (the same involved in the first suit,) under their said deeds of trust.

On the second day of March, 1881, this cause was, on the petition of the defendants, removed to the said Circuit Court of the United States for the Western District of Missouri.

On the second day of November, 1881, these two causes were consolidated, and from that day heard together.

The bills, answers, exhibits, testimony of witnesses, and agreements of counsel, disclose the following state of facts:

That, on the 30th June, 1879, the Daviess County Savings Association held seven deeds of trust executed by Patrick S. Kenney, and five of them by his wife, by which they conveyed to trustees all the lands they owned, to secure certain debts held by and due to the said association, amounting in the aggregate to more than $35,000. On 6th of August, 1879, Robt. L. Tomlin, the cashier of the said Savings Association, without receiving any money, acknowledged satisfaction of the several deeds of trust, and the notes secured by them, which acknowledgment of satisfaction was entered on the records of the County Court; and, thereupon, Patrick S. Kenney and wife executed a deed of trust, by which they conveyed to Lew. E. Darrow all their lands in trust to secure to Albert S. Webb, Robert S. Belknap, and Wm. H. Kane, trustees under the will of Henry R. Remsen, ten thousand dollars, payable in five years, at eight per cent. interest. Kennedy and wife thereafter, but on same day, conveyed the same property to David W. McNair, in trust, to secure to Geo. W. Frank and Darrow one thousand dollars, their compensation for negotiating the said loan of $10,000. Kenney and wife thereafter, but on the same day, conveyed the same land to Robert L. Tomlin, trustee, to secure to the said Saving Association its debt, amounting to $36,680.30 That no money was paid to said cashier on any part of the debts due the association when he entered satisfaction of the deeds of trust aforesaid; but when the $10,000 was procured from Albert S. Webb and others, secured by deed of trust, as above set forth; according to previous agreement with Tomlin, two judgments and a deed of trust, which were alleged to be prior liens on the lands to the liens held by the association, were paid off, and the balance the sum of $3,000, was paid to said cashier, and credited

on the new debt of Kenney to said association, and secured by the said last deed of trust to secure the association. This satisfaction by Tomlin, the cashier, of the deeds of trust held by the association was made without the knowledge or consent of the directors or president of the association, and as soon as it came to their knowledge it was repudiated. The notes and deeds of trust held by the association had not been surrendered by Tomlin to Kenney after cancellation. They were subsequently taken charge of by one of the directors, and held as genuine unsatisfied debts.

The Daviess County Savings Association proceeded to sell under these first deeds of trust, attempted to be cancelled by the cashier, and the first suit (No. 337) was brought by Webb and others to enjoin the sale under these deeds of trust, and to declare "satisfied, cancelled, and forever held for nought the said deeds of trust under which the association was proceeding to sell," and to declare the plaintiff's deed of trust "a first lien on all of said lands, superior, prior, and senior to all pretended claims, liens, rights, and interests of said association."

After this injunction was obtained, and pending the same, on the 13th day of November, 1880, Albert S. Webb, Robt. L. Belknap and W. H. Kane, trustees under the will of Henry R. Remsen, and George W. Frank and Darrow instituted proceedings in the Circuit Court of Caldwell County, Missouri, to foreclose their said deeds of trust on said land.

At the February Term, 1881, David A. Glenn, the Sheriff of Caldwell County; George T. Crozier, Sheriff of Daviess County, and the Daviess County Saving Association filed their bill in said Circuit Court against Albert S. Webb, Robert L. Belknap, and Wm. H. Kane trustees under the will of Henry R. Remsen, deceased,

Lew E. Darrow, George W. Frank and Darrow and David W. McNair, trustees, praying the Court to injoin the "defendants from further prosecuting their suits to forclose their respective deeds of trust aforesaid, and from selling said lands under the same."

This suit is No. 336, and was on the 2d day of March, 1881, removed on petition of defendants to the said Circuit Court of United States.

The two suits were thereafter consolidated and heard together, and on 5th day of November, 1881, the Judge of the Circuit Court of the United States finally decided these cases as follows:

1st. That as to action 336, the complainant's bill is hereby finally dismissed, the equities in said action being with the defendants. * * *

2nd. That in number 337 above set forth, the Court finds the "equities to be with complainants, and the prayer of their petition should be granted."

Then the Court perpetually enjoins the defendants in No. 337 from selling under the deeds of trust claimed by the said Saving Association, naming each one, (seven in number) specificially. And the Court "further adjudged and decreed that the cancellation of each of said deeds of trust by R. L. Tomlin, cashier of Daviess County Savings Association, on 6th day of August, 1879, is held and adjudged to be valid and binding as against said association. And the complainants in this action (337) under their deed of trust dated July 1st, 1879, and recorded in book O, page 208, on August 6th, 1879, in the records of Caldwell County, are held and adjudged to have a prior, senior, and superior lien on the lands named in said deed of trust as against all rights, liens or equities of the said Daviess County Savings Association."

On the 12th day of December, 1881, the said Alphonso L. Martin, William W. Clevenger and the Daviess County Savings Association appealed from said decision to this Court.

The decision in the Court below turned upon the validity of the attempted cancellation and release of the deeds of trust by R. L. Tomlin, cashier of the Daviess County Savings Association on 6th August, 1879.

It is conceded if said cancellation was valid, the decision is right; if invalid, the decision is unquestionably wrong, and should be reversed.

To make this action of Robert L. Tomlin, cashier, valid and binding on the association, of which he was cashier, it is necessary to show he was legally authorized to cancel these deeds of trust.

To arrive at a fair consideration of the law applicable to this question of his authority, the Statutes of Missouri, under which this association was incorporated, and the testimony as to his authority must first be carefully considered; also the Statutes of Missouri in regard to cancellation of deeds of trust.

Statutes of Missouri, Revised Statutes, 1879, Vol. 1, of mortgages and deeds of trust, chapter 52, page 565:

SEC. 3311. *Acknowledgment of satisfaction.*

"If any mortgagee, or trustee, or *cestui que trust*, his executor or administrator or assignee, receive full satisfaction of any mortgage or deed of trust, he shall, at the request and at the cost of the person making the same, acknowledge satisfaction of the mortgage or deed of trust on the margin of the record thereof, or deliver to such person a sufficient deed of release of the mortgage or deed of trust: *Provided*, That whenever any trustee shall acknowledge such satisfaction or execute such deed of release he shall be joined therein by the *cestui que trust*.

Sec. 3312 provides for a forfeiture of ten per cent. on amount of mortgage or deed of trust in case of refusal to acknowledge satisfaction, as above.

SEC. 3313. Attorneys in fact may make satisfaction.

"Any attorney in fact to whom the money due on any mortgage or deed of trust is paid, shall have power to execute said release, as specified in section 3311; such acknowledgment of satisfaction thus made, or such deed of release duly acknowledged and recorded, shall have the effect to release the mortgage or deed of trust."

* * * * * *

AN ACT TO ORGANIZE SAVINGS ASSOCIATIONS AND TO FACILITATE EXCHANGES.

Revised Statutes 1879, *page* 163.

(Approved 15th February, 1864.)

"WHEREAS, It is evident banks of issue will cease to exist in this State, and that the national currency issued by the Government of the United States must form and become the chief, if not the entire, paper circulation of the whole country; therefore, to provide safe places of deposit for the money of the people, where they can draw interest, and to afford facilities for exchange on different parts of the Union, be it enacted, &c.

"SEC. 1. Any five persons in any county in this State, except the county of St. Louis, who may organize themselves into a savings association, shall be permitted to carry on the business of receiving money on deposit and to charge interest * * * giving to the persons depositing certificates signed by the cashier of said association * * * of buying and selling exchange, gold, silver coin, bullion, uncurrent money, &c.; * * * * of loaning money on real estate or personal security at a rate of interest not to exceed 10 pr. ct. per annum, and of discounting negotiable notes and notes not negotiable." * * *

SEC. 2. (Omitted.)

SEC. 3. (Omitted.)

"SEC. 4. Each association may purchase and hold real estate sufficient for the purpose of carrying on its business, and may also purchase and hold real estate under executions in their favor for the purpose of securing their debts, or may hold real estate or personal property by deed or mortgage, deed of trust or otherwise, for the purpose of securing any indebtedness due said association."

"SEC. 5. Associations formed under this act may adopt by-laws for their Government not inconsistent with the laws and constitution of this State, or the United States; and may from their own body, elect one person as president, and one for cashier, and fix the pay of each."

SEC. 6. (Omitted.)

"SEC. 7. Before commencing business by any association formed under this act, the stockholders shall make out under oath a statement, and have the same recorded in the record office of the county in which such association is formed, showing and setting forth:

1st. The names of the members of the association.

2d. The capital stock that has been subscribed.

3d. The names of the president and cashier of the association.

4th. The name of the association adding thereto "savings association."

SECS. 8 and 9. (Omitted.)

SEC. 10 makes the association a body corporate, and politic with power to sue, &c.

SECS. 11 and 12. (Omitted.)

GENERAL STATUTES OF MO.

Title 24, chapter 62; revision of 1866, of private corporations, of their powers and liabilities.

"SEC. 4. In addition to the powers enumerated in the first section of this chapter, and to those expressly given in its charter, or in the act under which it is incorporated, no corporation shall possess or exercise any corporate powers except such as shall be necessary to the exercise of the powers enumerated or given."

The following proviso is found in the revised statutes of Mo., vol. 1st, page 116, section 706, chap. 21, article 1.

OF PRIVATE CORPORATIONS—OF GENERAL POWERS AND DUTIES.

Sec. 706, revision of 1879:

Provided, that no corporation shall engage in business other than that expressly authorized in the charter, or the law under which it may have been, or may hereafter be organized."

These are all the local laws which it is believed bear on the question.

THE FACTS ESTABLISHED.

The pleadings, agreement of counsel, the exhibits, and the deposition of witnesses establish the following facts:

Under the law approved February 15th, 1864, the Daviess County Association, organized, and complied with the requirements of statute quoted above.

From the stockholders or incorporators they elected James H. B. McFerran, president; who was succeeded by James Hemry on the 1st day of January, 1880, also elected Robert L. Tomlin, the cashier, who continued as such till the institution of these suits.

That the association did not adopt any by-laws.

That the only power expressly given to the cashier by the law of incorporation is found in its first section, that of signing certificates of deposit.

The power of the association to hold real estate above and beyond what may be necessary to carry on its business is, by the 4th section of act 15 February, 1864, confined to purchase under executions in their favor, and to real estate by deed or mortgage, deed of trust or otherwise, for the purpose of securing any indebtedness to the association.

It is proved by the testimony, that Robert L. Tomlin, cashier of the association, had no authority to enter the satisfaction complained of, other than that given by law, and growing out of the mere fact that he was cashier of

the association. He had no power of attorney from the President and Directors, or either of them, or from the stockholders. That at the beginning of the negotiations which resulted in the cancellation complained of, the association held liens by deed of trust on all the lands of P. S. Kenney to secure various sums due to it, amounting in the aggregate to more than thirty-five thousand dollars.

That these liens were the first on these lands except a deed of trust for benefit of Power, amounting to about five thousand dollars. The priority of the last named lien was as to 240 acres of land only. The contract between Lew. E. Darrow, agent for A. S. Webb and others, and the said Robert L. Tomlin, is set out in the evidence of said Tomlin on page 142 of record as follows:

"Upon satisfaction being made by me upon the records of Caldwell County of all deeds of trust held by the Daviess County Association upon the lands of P. S. Kenney, the said Darrow as agent of the plaintiffs, would file the deed of trust for $10,000 upon the lands of P. S. Kenney in favor of appellees for $10,000, and also the deed of trust upon the lands of P. S. Kenney in favor of Geo. W. Frank and Darrow for $1,000, which two deeds of trust would be first liens on all the lands of P. S. Kenney, and that any deed of trust in favor of the Daviess County Association upon the lands of P. S. Kenney, should be filed by me after the filing of said two deeds of trust by the said Darrow, and should be inferior and subject to the liens of plaintiff and George W. Frank and Darrow as above mentioned; and such agreement between Darrow and myself in reference to the order and precedence of the liens upon the lands of P. S. Kenney, was proposed by Lew. E. Darrow as a necessary condition of the loan made by the plaintiffs through him to Kenney, and was carried out in so far as my action was concerned for the purpose of enabling Kenney to obtain said loan from plaintiffs, and in consummation of the contract and transaction now sought to be enforced by plaintiffs in this case."

The surplus of the $10,000, after payment of the judgments which were obtained on 5th July, 1875, and the Fowler deed of trust, was to be paid as a credit on the new deed of trust to secure the association.

On page 216, said witness says this agreement was made by him alone; none of the directors knew anything about it but himself. That the first time the matter was canvassed by the directors, was when Col. McFerran was there in February, 1880.

On page 217, he says he had no authority to enter into this agreement and to cancel the deeds of trust, except the authority that legally pertains to the office of cashier.

On page 221 Tomlin says:

"I credited the new note of Kenney for $36,680.30 with the $3,000 as a credit or partial payment of said note, and entered the $3,000 on the books as a partial payment of the said note. The old notes were marked on the books as paid, and the new note was entered on the books as the one which Kenney was to pay, belonging to the bank. The $3,000 went into the general fund of the bank, and was used by the bank in its business."

The directors of the association at the date of this transaction were John A. Tuggle, R. S. Tomlin, and James Hemry.

John A. Tuggle, in his deposition on page 228, says he knew nothing of this transaction until about the first of 1880, and then repudiated it. That it was repudiated at first meeting of directors held in January or February, 1880. That Tomlin had no authority to act in the premises other than such as the law conferred on him as cashier.

James Hemry, in his deposition beginning on page 247, says he knew nothing of this transaction till February, 1880, and then learned it from outside parties;

that no power was delegated to Tomlin, only by virtue of his office; "he was never authorized to release securities or make contracts; the bank made him cashier, and never gave him any authority, except such as was conferred by the office upon him." "Neither the president or board of directors of the bank ever ratified or acquiesced in said transaction; on the contrary, the bank has rejected it, and determined to do so upon the first meeting of the board of directors after it first came to their knowledge, which did not exceed a week or ten days after it came to the knowledge of the individual directors—stockholders."

James H. B. McFerran was a director and the president of this banking association from its organization to January, 1879, and was during that period, and indeed up to 1st February, 1880, more than anyone else, an active manager of the affairs of the association. He was also the owner of a majority of its stock.

In his deposition on page 239 he says, Tomlin, the cashier, was instructed "to do the ordinary routine business of the bank at the counter, without first reporting the same to me, but subject to my approval or the approval of the board of directors. Further than this, he had no instructions or authority to act for the bank, without first obtaining the consent of the board of directors or myself." He had "no authority to discharge any duty with respect to said association, or the management or disposition of its property, other than such as legitimately grew out of his position as cashier, and arising out of his instructions before stated."

On page 240, he says he first learned through Mr. Trimble in January, 1880, that Tomlin claimed there was a deed of trust on Kinney's land for ten thousand dollars, senior and superior to the deeds of trust of the

association, but learned nothing from him in relation to the pretended entries of satisfaction of the association's deed of trust on the records, or the complainants loan to Kinney. That through counsel he had the records examined, and as soon as he found their true condition, and what Tomlin had done, a meeting of the directors was held at the bank, and the action of Tomlin was unanimously rejected and repudiated. Directions were then and there given to James Hemry, president, to foreclose original deeds of trust on Kinney's lands by advertising the same under the powers of sale contained therein.

This is all the evidence touching the authority of Tomlin, the cashier, to enter satisfaction of the seven deeds of trust held by this saving's association.

No witness contradicts the above witnesses or qualifies their statements.

The validity of the act of Tomlin in releasing these deeds of trust, and entering their satisfaction on the record must depend entirely on the authority and power conferred by law upon him by virtue of his appointment as cashier. This was the extent of his authority. No more, no less.

The act under which this association was organized, conferred on the cashier the single and only duty of signing receipts for money left on deposit.

But it is conceded that the law confers on him other powers and duties by virtue of his office, and it is maintained that these are correctly stated by James H. B. McFerran in his deposition, page 239, as "the ordinary routine business of the bank at the counter."

To ascertain what these powers and duties are we must be guided by the authorities.

Morse, in his valuable treatise on banks and banking, 2nd edition, page 152, treating of the powers and duties of cashiers, independent of any special authority conferred, says:

"The key-note to the whole subject lies in this—that the office of cashier is *strictly executive*. He is the business officer of the bank, but in the sense of one who *transacts* the business, not of one who regulates and controls it."

Again, on same page:

"He is properly the executive agent of the directors. It is his duty to carry out what they devise. They are responsible for the soundness of the action resolved upon; he is responsible for the honesty, accuracy, regularity and skill with which that action is carried out. They are the mind and he is the hands of the corporation. * * * It is not wholly inapt to liken the board of directors to a bench of judges, and the cashier to the clerk of the court."

This definition of the duties and powers of cashiers is sharply put and sustained by judicial decisions.

The case of *The Daviess County Association* vs. *Sailor*, reported in 63 Missouri, page 24, confirms this doctrine as to the powers and duties of cashiers in general, and especially the powers and duties of the cashier of this very bank. We must, therefore, look to this case as settling by the highest tribunal of the State of Missouri, the powers of this cashier under the laws of that State. In that case suit was brought on note of John Ballenger and Benj. K. Sailor to Joshua M. Sailor, and by the latter endorsed to the savings association. The defense relied on by Ballenger was that he was merely a security for J. M. Sailor, and that he went to the bank to see Mr. Tomlin, the cashier, and asked him if the Sailor note had been paid. He replied it had not, but the bank would not look to him any longer for payment.

In consequence of this agreement, Ballenger failed to look after the note, Sailor became insolvent, left the State, and Ballenger was sued by the bank.

Judge Napton, in delivering the unanimous opinion of the Court, on page 27, says:

"It was a mere agreement to discharge a surety, and not within the ordinary scope of a cashier's authority.

"A cashier of a bank has ordinarily no power to discharge a debtor without payment, nor has he any authority to bind the bank by an agreement that the surety shall not be called on to pay the note he has signed, or that he shall have no further trouble from it. A special authority to discharge sureties may be proved, or the cashier may be allowed to represent stockholders generally without any regard to the usual duties of a cashier. But there must be proof of such authority, as upon general principles he does not have any such powers."

The judge cites *Cocheeho Nat. Bank* vs. *Haskell*, 51 N. H., 116, to same effect.

In our case there is no such authority proved, and McFerran, who owned a majority of the stock, expressly directed that he (Tomlin) should "do the ordinary routine business of the bank at the counter, without first reporting to me, but subject to my approval or the approval of the board of directors." Further than this, he had no instructions or authority to act for the bank without first obtaining the consent of the board of directors or myself." (See his deposition, p. 239.)

In the case of *Shryock* vs. *Bashore*, 82 Penna. State Reports, on page 165, Mr. Justice Paxon, delivering the opinion of the court, says:

"It needs no argument to show that a cashier cannot part with the assets of a bank without its authority."

The acts of a corporation officer, acting without a special authority, are binding upon a corporation so far,

and only so far, as they are within the scope and ordinary course of the duties of his office.

Fulton Bank vs. *New York & Sharon Canal Co.*, 4 Paige, 127;

New England Fire and Marine Ins. Co. vs. *Schettler*, 38 Ill., 166;

Wright vs. *Ga. Railroad and Banking Co.*, 34 Ga., 330;

Stewart vs. *Huntingdon Bank*, 11 Serg & R., 267.

Other authorities from State courts might be cited, but this question has been so often before this court that it is deemed sufficient to cite its decisions, all of which will be found in harmony with the authorities above referred to.

In the case of *U. S. Bank* vs. *Dunn*, 6 Peters, 51, suit was brought on note against drawer and two endorsers.

The defence relied on, among other things, was that before endorsement the president and cashier assured the endorsers that they would incur no responsibility by endorsing the note.

Mr. Justice McLean, delivering the opinion of the court, on page 58, says :

"But the most decisive objection to the evidence is that the agreement was not made with the persons who have the power to bind the bank in such cases. It is not the duty of the cashier and president to make such contracts ; nor have they power to bind the bank except in the discharge of their ordinary duties."

United States vs. *City Bank of Columbus*, 21 How., 356.

Suit was brought in this case on a contract made by Wm. Miner with the United States. Miner was a director of the City Bank of Columbus, and was authorized in writing by the cashier to enter into the contract.

The question involved was the power of the cashier to authorize this contract. The case in this court turned upon the instruction to the jury given in the court below in the following words:

"That if they should find that the letter written by Moodie, (the cashier,) was his own act, and had been given without the knowledge or authority of the board of directors, or any of them individually, except Miner, and that the agency of Miner was not constituted by or known to the board of directors, or any of them individually, except Miner, but was the act of the cashier alone; and if they should find that Moodie had no power as cashier, except such as belonged to the office of cashier generally, or such as are given by the charter, or by the by-laws, or other law or usage of the bank; that the defendant was not concluded by that letter, and is not bound by the contract made by Miner without subsequent ratification of the same."

Mr. Justice Wayne, delivering the opinion of the court, on page 363, approved the instruction, and on page 364 says:

"The term 'ordinary business,' with direct reference to the duties of cashier of banks, occurs frequently in English cases, and in the reports of the decisions of our State courts, and in no one of them has it been judicially allowed to comprehend a contract made by a cashier without express delegation of power from a board of directors to do so which involves the payment of money unless it be such as has been loaned in the usual and customary way."

It is clear from the evidence that no expressed authority was given by the laws of Missouri to the cashier to enter into this contract and release the securities of the bank. It is equally clear that no such authority was given either by the stockholders or directors; on the contrary, he was expressly forbidden to do such acts by McFerran, who was for a long time president and director of the bank, and always the owner of a majority

of the stock. It is conceded that if this prohibition was intended to limit the usual and general powers of the cashier incident to his position as such, this limitation must have been made public, or have been known to the parties with whom he dealt. It is not pretended that this limitation was published or known to the parties dealing with him. It is used in this argument to show that the ordinary powers of the cashier were certainly not enlarged. That parties dealing with him could not, in any way, confide in any acts of the cashier which were outside of the ordinary powers which the law gives to such officers by the mere fact of appointment, and the parties dealing with him in contracts outside of these usual and ordinary powers did so at their peril.

To determine this case we must find out and define the powers of this cashier growing out of, and incident to, his position as such. The authorities cited above clearly define what they are.

These are executive and ministrial, not discretionary or *quasi* judicial.

He must execute the contracts made by the directors, and carry out their orders. *

The case of *The United States* vs. *The Bank of Columbus*, recognizes and re-states the settled law to be that the making of a contract involving the payment of money or the purchase or sale of property is not within the ordinary business of a cashier, and that parties relying on such a contract must show a special delegation of power or authority.

These decisions of this Court have never been overruled or modified, and no case can be produced in which this Court has departed from the principles of the cases cited, defining the ordinary business with direct reference to the cashiers of banks.

The case of *Merchant's Bank* vs. *State Bank*, 10 Wal., 604, has been relied on as changing or altering this doctrine, but an examination of that case will bring us to the opposite conclusion.

In that case the cashier of the State Bank had certified the checks of Mellen Ward & Co. on his bank, to the Merchants' Bank as "good." One of the questions involved in the case was whether the State Bank was bound by this certificate of its cashier. The Court below decided that this act of the cashier did not come within his authority, resulting from his appointment as such, and instructed the jury to find for the defendant, the State Bank. This decision was reversed on appeal to this Court.

Mr. Justice Swayne, in delivering a majority opinion of the Court, on page 649, says:

"The question we are now considering is the authority of the cashier. It is his duty to receive all the funds which come into the bank, and to enter them on his books. The authority to receive implies and carries with it authority to give certificates of deposit, and other proper vouchers. Where there is money in the bank he has the same authority to certify a check to be good, charge the amount to the drawer, appropriate it to the payment of the check, and make the proper entry on the books of the bank. This he is authorized to do *virtute officii*. The power is inherent in the office. The cashier is the executive officer through whom the whole financial operations of the bank are conducted. He receives and pays out its monies, collects and pays its debts, and receives and transfers its commercial securities. * * * The directors may limit his authority as they deem proper, but this would not effect those to whom the limitation was unknown."

It is clear this case does not enlarge the definition of the ordinary powers of cashiers as given in the cases referred to. There is not one word of disapproval of those

authorities. It only decides that the power to certify a check "good" is one of those ordinary powers. There is no escape from the reasoning of the court. The check of A. on a bank is presented to its cashier. He is unquestionably the proper officer to present it to. If A. has funds the cashier is the proper person to pay the check. But the payee is not present, and A. wants evidence that he has funds and that the check will be paid. He gets the cashier to say on the check it is "good." This, says Justice Swayne, is no more than a transfer of the funds of A. to the payee, and is the same thing in effect as if the payee had presented A.'s check and received the money and deposited it to the credit of payee, all of which is unquestionably within the ordinary duties and powers of a cashier and incident to his office.

It has no feature of resemblance to the transaction involved in the case at bar, where the cashier undertook to release the securities of debts due to the bank without receipt of payment, and it is claimed this was one of the ordinary duties pertaining to the office of cashier.

In the case of *West St. Louis Savings Bank* vs. *Shawnee County*, 5 Otto, 357, the question was the liability of the bank on an endorsement made by its cashier on his own individual note.

Mr. Chief Justice Waite, in delivering the opinion of the court, decided there was no liability on the bank, and on page 559 says:

"Certainly he is not presumed to have power by reason of his official position to bind his bank as an accommodation endorser of his own promissory note. Such a transaction would not be within his general powers, and one who accepts an endorsement of that character, if a contest arises, must prove actual authority before he can

recover. There are no presumptions in favor of such a delegation of power. The very form of the paper itself carries notice to a purchaser of a possible want of power to make the endorsement, and is sufficient to put him on his guard."

How strongly this reasoning of the Chief Justice applies to the case at bar.

The cashier, without receipt of the money, was attempting to release the securities of the bank. "Such a transaction would not be within the scope of his general powers," and one who deals with him in such a transaction, if a contest arises, must prove actual authority before he can prevail. The very character of the transaction itself carries notice to the party of a possible want of power, and is sufficient to put him on his guard. No actual authority is shown in this case, but on the contrary an actual prohibition by McFarran, the president, and owner of the majority of the stock.

The appellees knew when the cashier entered satisfaction and release that the debts due the bank had not been paid, and therefore must have known that he was doing an act which did not come within the ordinary powers of the cashier.

(See Tomlin's testimony, page 139, answer to 11th interrogatory.)

This action on the part of the cashier was not sanctioned by the previous conduct of the cashier. He says in his testimony, page 141, answer to 16th interrogatory:

"It was my custom, as cashier of the bank, to enter satisfaction upon the records of deeds of trust held by the bank *upon payment to the bank of the money due thereon, but not otherwise.*"

This transaction was not, therefore, within the ordinary powers of the cashier; it had not been delegated,

and its exercise had never been attempted before. It was a solitary instance in the life of this cashier when he attempted to release the securities of a debt due the bank, before the debt was paid, and his action cannot be upheld in the light of the authorities.

It is denied that the *directors* of this bank could have released the debts due to the bank without receipt of amount of the debts.

Morse, on Banks and Banking, page 118, lays down the doctrine on the subject as follows:

"Directors can use the funds and property of the bank only for proper banking purposes, and for the strict furtherance of the business objects and financial prosperity of the corporation. Their discretion and power to manage its affairs extends *only* to the conducting those affairs in the best manner that their knowledge, foresight, and observation can suggest, to the end of increasing the profits and enhancing the value of the investments which have been committed to their charge by others."

Bedford Railroad Co. vs. *Bowser*, 48 Penna., 30.

"The directors of a corporation are its agents, with limited powers, and their duties are to conduct its affairs in furtherance of the ends of its creation. They have no power to destroy it, or give away its funds, or deprive it of the means to accomplish the purposes for which it was chartered"

This was an action to recover subscription of stock by Bowser to the company, which subscription had been cancelled by the Board of Directors without payment of the money. The Court decided the board had no such power, and compelled payment to the company.

See also—

Salem Bank vs. *Gloucester Bank*, 17 Mass., 1;
Foster's Exr. vs. *The Essex Bank*, 17 Mass., 510;
Wyman vs. *Hallowell & Augusta Bank*, 14 Mass., 61.

These cases establish the principle that banks are not responsible for the wrongful acts of their officers unless done in the discharge of their duties legitimately belonging to such officers, or specially signed to them by the bank—the corporators.

If the directors could not release these debts without payment, of course they had no power to authorize the cashier to do it.

It could then only be done by the corporators—the stockholders, who were the real owners of these debts.

Ratification.

But it is contended that, if the action of the cashier was without authority, it was ratified by the directors after it was done.

Of course, if the directors could not have done this, they could not ratify it after it was done.

But, granting for the sake of the argument, that the directors had the power to do this, and consequently to ratify it after it was done, was there ever such ratification by the Board of Directors?

Morse, on page 111, says:

"The bank is bound by the action of the majority of the Board, taken in the manner usually adopted by the Board, no matter how informal or peculiar that manner may be. An expression of the will of the majority is what the law looks for and recognizes. It seems, however, that it is indispensable to the validity of any action that it should be taken by the Board; that is, that it should be the vote of a majority of a quorum at a regular and legal meeting of the Board."

The testimony proves that there was no meeting of the board in this case after the transaction complained of till February, 1880, when the action of the cashier was unanimously repudiated, and the president in-

structed to enforce the original securities for the debts due the bank.

(See testimony of McFerran and the directors.)

It is certainly true that the board of directors did not know of this transaction till the date of its repudiation. It is equally true that the individual directors did not know of it till about that time.

But it is claimed that due diligence on the part of the directors would have led them to a knowledge of the transaction; that an examination of the books of the bank would have led to a discovery of it, and their failure to examine the books leads to all the consequences of ratification with full knowledge. This might be said with more force if Tomlin was the agent of the directors individually, and they alone were to suffer by their negligence. But both the directors and the cashier were the agents of the bank, having their respective duties assigned to each by the law, and any departure from their line of duty affects the bank that had the legal right to suppose that persons were dealing with them with a knowledge of the powers conferred by law.

We have seen that the directors, as a matter of fact, did not know of this transaction till the time when they repudiated it.

Is it true that an examination of the books would have disclosed the nature of the transaction?

Tomlin, in his deposition on page 221, says:

"I credited the new note of Kenney for $36,680.30 with the $3,000 as a credit or partial payment of said note, and entered the $3,000 on the books as a partial payment of the said note. The old notes were marked on the books as paid, and the new note was entered on the books as the one which Kenney was to pay belonging to the bank."

And on page 111 same witness (Tomlin) says:

"The entries on the books of Daviess County Savings Association at the time of this transaction by me are shown in Exhibit C, as follows:

GALLATIN, Mo., *Aug't. 7th*, 1879.

Discounts paid.

P. S. Kenney (9 notes paid)	$25,265.14
P. S. Kenney, paid by Darrow	3,000.00

Discounts out.

P. S. Kenney	$36,680.30

"The entry of the $36,680.30 is the new note taken from Kenney for his indebtedness to the bank."

This was all the books of the bank disclosed. Did these entries give information, to anyone who might examine them, of the transaction here assailed? The most that could be made of it was that Kenney had paid $3,000 on the nine notes held by the bank, and had given a new note for the exact amount of the nine old ones, with interest, and was credited on the new note with the payment of $3,000.

This was all that appeared there. There was nothing to show that the cashier for the first time in his official life had released the deeds of trust to secure the debts due the bank without satisfaction by payment. There was nothing on the books to show that Tomlin had agreed that a deed of trust for $10,000 should be made a prior lien to that of the bank. Nothing whatever to show that Tomlin had attempted to allow a deed of trust for $1,000 to be also made a prior lien to those of the banks. There was nothing on the books to show that Tomlin had helped to negotiate a loan for Kenney, and in order to do this had attempted to destroy the bank's liens to enable Kenney to first secure this loan,

and $1,000, the fee charged by Darrow for negotiating the loan. It is confidently maintained there was nothing on the books to inform the directors of this transaction of Tomlin, which was repudiated as soon as known.

But it is claimed that the receipt of the $3,000, the result of this transaction, binds the bank to stand by the transaction, and to ratify it in every particular.

Now it may be true that the $3,000 would not have been paid to the bank if this loan had not been made to Kenney. It may be true that the loan would not have been made if Tomlin had not agreed to release the bank's securities. But while this may be true, Kenney did make the loan without any agency of the bank, or any of its legally authorized officers, and from the loan thus made Kenney did pay the bank $3,000, and it was entered on the books as paid by Kenney, and proved by Tomlin on page 215, to have been paid to him by Kenney. Surely there was no obligation on the bank to return this money which Kenney had paid on his debt.

The appellees, Webb and others had loaned Kenney this money on a security which satisfied them, and out of the money thus loaned to Kenney, he paid the $3,000 on his debt to the bank. If on making this loan the appellees acted on an agreement with a person wholly unauthorized to make it, then it is their misfortune growing out of their trust in a cashier who had no special authority to make it, and whose general powers under the law forbade him to make. If the appellees have made this loan without proper security they have no one to blame but themselves. Certainly they have no right to blame the bank, or hold it responsible for the unauthorized, and therefore illegal acts of their cashier.

It is maintained on the part of appellees, that all the

money loaned by them to Kenney was appropriated to pay off liens prior to those of the bank on this land, or to the bank itself, and that therefore this transaction did not injure the bank, but on the contrary was beneficial to it, because by it the bank obtained a mortgage in which the dower of Kenney's wife was released, and that because of this there is no equity in appellants case.

In the first place, we answer that each person is entitled to be his own judge, as to what is for his best interest in such contracts as he may make, and no other person without his authority has the right to make a contract for him, and then say you must stand to this contract, because it is for your benefit. The sole question to be determined, is whether the cashier had authority to make this arrangement. The authorities above quoted establish that he had not such authority, and if so the bank being its own judge in the premises has the right to repudiate or ratify it. It has chosen the former, and no one has the right to say you shall not do this because it is not for your best interest.

But was this arrangement which the cashier attempted to make, for the best interest of the bank.

There was only one outstanding prior lien on this land at the date of the transaction; that of the Power deed of trust for $5,000, and this was a lien on only 240 acres of the 1,240 acres on which the bank had the next seven liens. This 240 acres may have been sufficient to pay the $5,000. The evidence does not disclose its value. But if sufficient to pay that debt, it was the only debt which could have been made before the debts held by the bank were paid.

The judgments were not liens on Kenney's land at date of this transaction, 6th August, 1879. They were rendered July 5, 1875. On that day several of the deeds

of trust held by the bank had been recorded, and of course they became liens prior, and superior to the judgements.

They were recorded as follows:

1st. For $3,000 principal, executed by Kenney and wife, was recorded 10th February, 1872.

2nd. For $2,112 principal, executed by Kenney, was recorded 17th November, 1873.

3d. For $1,650 principal, executed by Kenney and wife, was recorded 8th January, 1874.

4th. For $5,036 principal, executed by Kenney and wife, was recorded 3d September, 1874.

5th. For principal executed by Kenney and wife, was recorded 2d October, 1874.

6th. For $8,013 principal, executed by Kenney, was recorded 29th May, 1875.

7th. For $4,888 principal, executed by Kenney and wife, recorded 13th April, 1876.

Six of these deeds were recorded before the rendition of the judgments, and, of course, they were superior liens.

But section 2731 on page 461 of 1st Vol. of Revised Statutes of Mo. 1879, provides:

"The lien of a judgment or decree shall extend as well to real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided."

Section 2732 provides for a revival of a judgment by *scire facias* at any time within ten years.

Section 2733 provides as follows:

"If a *scire facias* be issued after the expiration of the lien and a judgment of revival is afterwards rendered, such revival shall only take effect from the rendition thereof, and shall not prevail over intermediate incumbrancy."

Now, when this transaction between appellees and Tomlin took place on the 6th August, 1879, the judgments rendered on 5 July, 1875, had ceased to be a lien as against any of the seven deeds of trust held by the bank on and prior to the 6th August, 1879. More than three years had elapsed and they had not been revived.

Nor had the wife of Kenney any dower right in the lands conveyed by the said seven deeds of trust.

It will be seen by reference to the deeds of trust as described by Tomlin in his testimony on pages 210, 211, 212, and hereinbefore set out, that the first deed of trust held by the bank was executed by Kenney and wife. In that deed she relinquished her dower in said lands, and nothing remained to her but her dower in the equity of redemption or in the surplus after paying this debt. She also united in the third, fourth, fifth, and seventh deeds. She did not unite in the second and sixth deeds. If a sale was made under these seven deeds of trust the practical result would exclude all the rights of dower, unless there was a surplus after paying all the debts. In this surplus, if any, she would be dowerable. It is conceded that the lands when sold will not pay these debts, and we must see how her rights would stand in that case.

A sale is made under the first deed in which she united, and the purchaser would obtain a title to the land free from her dower, but she would have dower in the surplus. The surplus to which the husband is entitled would go first to the payment of second deed of trust in which she did not unite.

Then what is due both Kenney and wife after second deed of trust is satisfied would go to discharge the debts secured in third, fourth, and fifth deeds of trust in which she did unite.

The debt in the sixth would have to be paid out of the interest of Kenney alone, but the seventh in which she united would absorb her entire interest. So that practically the wife had prior to the new transaction with Tomlin, relinquished her dower in this land as effectually as she did in the deeds of 6th August, 1879. These facts were record facts—patent to every person, and especially to the agent of the appellees, who is a lawyer.

It will not do to say that Tomlin thought and said that the widow was entitled to dower in these lands, and that the liens of the judgments were prior and superior to appellant's seven deeds of trust.

It was a question of law arising from the records; not for the determination of Tomlin, but of the appellees or their agent. They knew Tomlin was only the cashier of this bank, its executive officer, and that he had no powers in the premises, except such as pertained to him as such. They had no right to rely on his representations or his acts if they exceeded his well-defined powers as cashier. He who was only the arms of this bank, and undertook to be its head; he who filled a place in this bank similar to a clerk of a court undertook to discharge the functions of the court. Those who dealt with him did so at their peril, and took the risk of a special authority to the cashier, which we have seen was never given.

The transaction between the appellees and Tomlin, if sustained, would therefore work a great injury to the bank. It makes $11,000 a prior lien to the bank, and

only discharges a prior lien of $5,200, a clear loss to the bank of $5,800, besides costs amounting to many hundred dollars.

It is said by Kenney in his deposition, page 119, that the Barnum deed of trust which was held by the bank was superior and prior to the Power deed of trust. The evidence does not fully discose this. But if this is so, then of course the transaction was to greater extent to the injury of the bank. The injury or loss inflicted on the bank by this arrangement attempted by Tomlin was very great in any view you may take of it. It was transacted in another county, away from the bank. It must have been patent to the agent of the appellees that Tomlin was attempting to make an arrangement injurious to the bank, away from the domicil of the bank, and it was the plain duty of this agent under these circumstances to require the production of special powers on the part of Tomlin.

At any rate the failure to require its production makes the transaction at the hazard of the appellees, and if there was no special authority they must suffer the consequence of their own careless dealing.

Tomlin did not have the power to do this, and the appellee's cannot escape by averring that they had a right to believe he had it, because they have proved that he was the only person known to the public who transacted the business of the bank, and that he, Tomlin had on many occasions released deeds of trust, &c.

But whenever Tomlin stepped beyond the power with which he was clothed as cashier by the mere force of his office, the authorities say that parties dealt with him at their peril, and ran the risk of a special authority to do the act if it was contested.

Parker, Ch. J., in *Wyman* vs. *Hallowell and Augusta Bank*,

14 Mass., on page 63, says · "It has been urged in argument that the principles which are applied to contracts made by agents for another upon an authority implied from former employment of same agent for similar purposes would be justly applicable to the defendants in the case before us. But there is a material difference. The individual stockholder commits no authority to its officers but that which is given by the charter of incorporation and by a vote of a major part in interest of the individuals acting in a corporate form. No sanction of any act beyond the authority so derived can be implied by the repetition of the act. For the company as such or the individuals composing it might not and generally would not know of any transactions of this singular form."

This doctrine was reaffirmed by the same learned judge in the case of *Salem Bank* vs. *Gloucester Bank*, 17 Mass., on page 29.

Where the charter gives no such authority and the stockholders and directors give no such authority, then the parties dealing with the officer must look to the authority belonging to the officer by law, and "no sanction of any act beyond the authority so derived can be implied by the repetition of the act."

We recapitulate the grounds on which we rely to reverse as erroneous the judgment of the court below, in sustaining the action of the cashier when he released the seven deeds of trust to secure debts held by the bank :

1st. The cashier had no special authority to make the release.

2nd. That he had no such authority from his powers growing out of his position as cashier

3d. That he was not so authorized by the stockhold-

ers. On the contrary McFerran, who owned a majority of the stock, expressly instructed against such transactions without the approval of the directors or himself.

4th. That the directors themselves had no power to make such an agreement, and therefore could not ratify what they could not do.

5th. That the directors did not in point of fact ratify this action of the cashier. On the contrary, as soon as it became known, a meeting of the board was called, the action was repudiated, and the president ordered to proceed to sell under the old deeds of trust.

6th. That the directors did not know of this transaction till February, 1880, when it was repudiated, and could not have known of it by the most diligent examination of the books.

For these reasons, we maintain with confidence, that the decision of the court below must be reversed, and the seven deeds of trust to secure debts held by the bank, must be held as valid subsisting liens on the lands of Kenney, superior and prior to the deeds of trust to secure to the appellees $10,000, and to Darrow $1,000.

Respectfully submitted.

HUNTON & CHANDLER,

For Appellants.

110-7

NOV 2 1883

Supreme Court of the United States,

October Term, 1883.

No. 801.

ALPHONSO L. MARTIN, Sheriff, etc., WILLIAM W. CLEVINGER, Sheriff, etc., and THE DAVIS COUNTY SAVINGS ASSOCIATION, of Gallatin, Missouri, *Appellants,*

vs.

ALBERT S. WEBB, ROBERT L. BELKNAP and WILLIAM H. KANE, Trustees under the Will of Henry Remsen, deceased, LOU E. DARROW, GEORGE W. FRANK and DAVID McNAIR, *Appellees.*

Appeal from the Circuit Court of the United States for the Western District of Missouri.

BRIEF AND ARGUMENT OF APPELLEES.

STUART BROS., R. T. MERRICK AND M. F. MORRIS,
Attorneys for Appellees.

Supreme Court of the United States,

October Term, 1883.

No. 801.

ALPHONSO L. MARTIN, Sheriff, etc., WILLIAM W. CLEVINGER, Sheriff, etc., and THE DAVIS COUNTY SAVINGS ASSOCIATION, of Gallatin, Missouri, *Appellants,*

vs.

ALBERT S. WEBB, ROBERT L. BELKNAP and WILLIAM H. KANE, Trustees under the Will of Henry Remsen, deceased, LOU E. DARROW, GEORGE W. FRANK and DAVID McNAIR, *Appellees.*

Appeal from the Circuit Court of the United States for the Western District of Missouri.

BRIEF AND ARGUMENT OF APPELLEES.

STUART BROS., R. T. MERRICK AND M. F. MORRIS,
Attorneys for Appellees.

I.

STATEMENT OF CASE.

Not having been favored, up to this date, with a statement of the case as made by appellants, we have thought it proper to set forth a brief outline of the facts.

Albert S. Webb, Robert L. Belknap and Wm. H. Kane are the trustees under the will of Henry Remsen, deceased, and reside in the State of New York.

Frank and Darrow are bankers, and reside in Corning, Iowa.

The Davis County Savings Association is a banking institution at Gallatin, Missouri.

Patrick S. Kenny is a large land owner in Caldwell county, Missouri.

About the 1st of July, 1879, Kenny was indebted to the bank (the D. C. S. A.) in about $36,000; part of this was secured and part not. The securities held by the bank were defective, and there were trust deeds and other liens to other parties prior to those of the bank. The bank was unable to advance the money to remove these prior liens; thereupon the cashier of the bank concluded that he would have Kenny make a loan upon his land for some $10,000. The cashier, Tomlin, undertook to procure this loan for Kenny. He addressed, and had other parties address letters to Frank & Darrow, who were in the loaning business.

Tomlin offered to cancel all the trust deeds to the bank, and give first lien to party making the loan. He proposed that the money should be used, first, in paying off those liens prior to those of the bank; and second, that the balance should come to the bank.

The amount due to Frank & Darrow for procuring the loan was also to be a lien prior to that of the bank.

The loan was finally made of $10,000, through the instrumentality of Frank & Darrow, of Remsen's trustees.

The liens prior to those of the bank, amounting to about $7,000, were all paid off under the direction of Tomlin, and the balance of the money was paid to Tomlin. He canceled on the records all the trust deeds of the bank, and marked the old notes and trust deeds as paid, and carried such entry on the bank books.

The trust deed to Remsen's trustees was then placed of record as the prior lien; the trust deed to Frank & Darrow for $1,000 as the second lien. And after that the bank consolidated its indebtedness into one note of $36,680.30 against Kenny, and took a trust deed subject to these prior liens on the same lands that it had liens on before, and others. The $3,000 received by the bank was entered as a credit on the $36,680.30, and the note and such credit were carried on to the bank books.

Kenny never received a cent. All of the money went directly to the bank, or was applied under the direction of the cashier for its benefit, to satisfy prior liens.

In December, 1879, when the first installment of interest fell due to Remsen's trustees, the bank, by Tomlin, its cashier, paid it.

The old notes and trust deeds of Kenny, at the time the new one was taken by the bank, were marked canceled by Tomlin, as stated, and laid away in the bank to be handed to Kenny when he came to the town.

McFerran, who had been the president of the bank for eight or ten years, lived in Colorado Springs, Colorado. He visited Gallatin in February, 1880, and finding the old trust deeds and notes of Kenny in the bank, he and others interested in the bank concluded that they would try to foreclose them. With this object in view they advertized to sell the lands described therein, using all precau-

tions that they could to prevent Remsen's trustees from obtaining any knowledge of such undertaking on their part. This action was brought to enjoin the bank from such attempted foreclosure.

Some months after the bringing of this action, Remsen's trustees brought an action to foreclose their mortgage, and Frank & Darrow brought an action to foreclose their mortgage; both of these actions were enjoined by the bank. Upon final hearing the two latter actions were consolidated with the main action for trial, and the decree rendered in the main action was for a perpetual injunction against the bank in favor of Remsen's trustees; and in the action of injunction brought by the bank the bill was finally dismissed.

There is no dispute as to what Tomlin, the cashier of the bank, did; but it is claimed by the bank that

TOMLIN HAD NO AUTHORITY.

Upon this question a few of the leading facts are: Tomlin was cashier and a director of the bank from 1872 to 1881. The records of the bank show there was no bank meeting of the directors or stockholders from 1865 to 1869, and from December 18, 1869, to January 2, 1872.

It is not shown by the books or otherwise that the directors ever had anything to do with the business of the bank. They never met oftener than once a year, and all that was done was to elect three directors and declare dividends. From the year 1872 up to the year 1879, (or perhaps 1880) the president of the bank lived in Colorado Springs, and did not visit Missouri oftener than once a year.

It is affirmatively and clearly shown that during these six or seven years there was not one of the directors that ever had anything to do with the bank business but Tomlin. They testify that they expected him to attend to all business for the bank. In these years the records of Davis county show that Tomlin satisfied over one hundred and sixty trust deeds. In some cases he released lands held and took new security; some of these instances were before and some after the transactions occurred in this case; his authority has never been questioned until this transaction. He was in such absolute control of the bank that it was known as "Tomlin's Bank." Nobody knew of any trustees; the attorneys of the bank even, did not know that there were any directors. So little attention was paid by the other officers, that the evidence herein shows that even among themselves there was quite a difference as to who was the president for the year 1879.

Tomlin often released lands held by the bank by trust deeds when the indebtedness secured thereby was not paid or only paid in part. The bank has never tendered back the money it received by Tomlin's contract, but has held on to all benefits derived therefrom. It holds the new note and new trust deed taken from Kenny, and has taken possession of the lands thereunder, and given back to Kenny a lease.

The loan was made to Kenny, July 1, 1879, and the first step taken by the bank to question it was not until February, 1880.

The above are a few of the most prominent facts.

II.

AUTHORITIES.

We here beg leave to submit our authorities. We would divide them under different headings, but many of the opinions cover different propositions. We will use them again in argument under the III division hereof.

Daviess Co. Savings Association vs. Sailor et al, 63 *Mo.*, 24.

In this case the facts testified to were, that Ballinger was a surety on the note of Sailor. That he went to the bank and asked the cashier if the Sailor note had been paid.

"He (the cashier) said it had not, but that the bank at Chillicothe or McFerran's bank, had a mortgage on Sailor's land; had been loaning him money; was carrying him, and that plaintiff would not look to him (Ballinger) any longer for the payment of the note. In consequence of these statements, defendant and witness thought no more of the matter, and he was surprised at the suit some fourteen months after the maturity of the note."

The Court says:

"A cashier of a bank has ordinarily no power to discharge a debtor without payment. Nor has he any authority to bind the bank by an agreement that a surety shall not be called on to pay the note he has signed, or that he shall have no further trouble from it. A *special* authority to discharge sureties may be proved; or the cashier *may be allowed to represent stockholders generally without any regard to the usual duties of a cashier.*"

There was no evidence that Ballinger acted on this agreement and no consideration shown for it.

United Society of Shakers vs. Underwood, 15 *American Rep.*, 731.

The head notes of the opinion are as follows:

"In an action against the directors of a bank which had become insolvent, to recover the value of bonds placed in the bank on special deposit, plaintiff alleged that said bonds had been wrongfully converted by the officers of said bank to the use thereof, of which facts defendants had notice, or could have had by the exercise of ordinary vigilance, from the books, etc., of the bank; and that said directors did on various occasions declare dividends when the condition of

the bank did not justify the same, and so appropriate to themselves, they being the largest stockholders, large sums of money actually realized from the conversion of plaintiff's property. *Held*, that these facts constituted a good cause of action."

"It is the duty of bank directors to use ordinary diligence in acquiring knowledge of the business of the bank, and they will be held to be affected with knowledge of *such facts* as appear on the *bank books*."

We quote from the opinion a few sentences:

"Their subsequent action (the defendants) in directing the proceeds or some portion thereof to be paid out in the shape of dividends to the stockholders, including themselves, was a *ratification* of the conversion which they had theretofore wrongfully permitted."

Again, it is said:

"It is the *duty* of bank directors to use ordinary diligence to acquaint themselves with the business of the bank, and whatever information might be acquired by ordinary attention to their duties they may, in controversies with persons transacting business with the bank, be presumed to have.

"They *cannot be heard* to say that they were not apprised of facts shown to exist by the ledger, books, accounts, correspondence, reconcilements, and statements of the bank, and which would have come to their knowledge except for their gross neglect or inattention."

Mundorff, appellant, vs. Wickersham, 3 *American Rep.*, 531.

Head note as follows:

"Defendant's agent, in procuring plaintiff's note, signed a receipt in the name of the principal, containing an undertaking that the note should be protected at maturity. He was not authorized to sign such a receipt; but defendant used the note in his business, and plaintiff was obliged to pay it at maturity. *Held*, That defendant was liable on the contract contained in the receipt.

"Sharswood, Judge: If an agent obtains possession of the property of another by making a stipulation or condition which he was not authorized to make, the principal must either return the property, or, if he receives it, it must be subject to the condition upon which it was parted with by the former owner. This proposition is founded upon a principle which pervades the law in *all* its branches: *Qui sentit commodum, sentrie debit et onus.*

"The *books are full* of striking illustrations of it; and more especially in cases growing out of the relation of principal and agent.

"Thus, where a party adopts a contract which was entered into without his authority, he must *adopt it altogether*. He *cannot* ratify that part which is *beneficial* to himself and *reject* the remainder; he must take the benefit to be derived from the transaction *cum onere:*

Broom's Legal Maxims, 632: Hovil vs. Pack, 7 East., 164; Coleman vs. Stark, 1 Oregon, 115.

"*Alexander vs. Gibson*, 2 *Camp.*, 555; *Williamson vs. Canada*, 3 *Ind.*, 349.

"Where one or two innocent persons must suffer by the fraud or negligence of a third, whichever has accredited him ought to bear the loss.

"*Lobdell vs. Baker*, 1 *Metc.*, 193: A principal who sues to enforce a contract is bound by the representations made by his agent in order to induce the opposite party to make it.

"*Bennett vs. Judson*, 21 *N. Y.*, 238; *Elwell vs. Chamberlain*, 4 *Bosw.* 320; 31 N. Y., 611.,

"So a debtor cannot have the benefit of a compromise and release effected by his agent without adopting all the representations made by the agent to the creditors in negotiating it."

The State Board of Agriculture vs. The Citizens Street Railway, 17 American Rep., 702.

(47 Indiana, 407.)

Head notes: "When a corporation enters into a contract *ultra vires*, and the other party in reliance thereon and in execution thereof expends money, the corporation is liable on the contract, provided it be not in violation of its charter nor prohibited by law."

Parish vs. Wheeler, 22 *N. Y.*, 494; *Bissell vs. Michigan R. R. Co.*, *Id.*, 258; *DeGroff vs. Amer. L. Thread Co.*, 22 *Id.*, 124.

In Sedgwick Stat. and Const. Law, 73, 2d Ed., it is said: "It must be further borne in mind that the invalidity of contracts made in violation of statutes is subject to the equitable exception that, although a corporation, in making a contract, acts in disagreement with its charter, when it is a simple question of capacity or authority to contract, arising either on a question of regularity of organization or of power conferred by the charter, a party who has had the benefit of the agreement, cannot be permitted, in an action framed on it, *to question the validity.* It would be in the *highest degree unequitable and unjust to permit the defendant to repudiate a contract, the fruits of which he retains.*

"These profits we are at liberty to presume have gone to swell the dividends of the stockholders in that corporation. *It would be unjust for the corporation now to escape performance of the contract by which these profits have been realized.*"

Bank of New Haven vs. Perkins, 4 *Bosworth* (*N. Y.*), 420.

Head notes:

"When the directors of a bank allow its cashier for several years in succession, without interference or inquiry by them, to transact

the business of the bank in such manner as in his judgment may be proper and for its interest, they thereby in effect authorize him to make all and any contracts which he deems expedient in relation to its business, which the directors might lawfully make; and such contracts will conclude the bank as between it and a party who has dealt with it through such cashier, and on the faith of his having authority to make such contracts, has loaned money to such bank, provided the charter of such bank does not prohibit it from making such contracts through its cashier."

Durkin vs. Ex. Bank of Va., 2 *Patt. & H.* (*Va.*), 277.

Head notes:

"The charter and by-laws of the bank required that the board of directors should prescribe the duties of its officers, and the charter also required the directors to keep a book in which shall be entered and faithfully recorded a journal of all their proceedings."

"*Held.* These provisions were merely directory, and the prescription of certain duties to the cashier might be *inferred* and presumed from evidence of acts of the board and of the cashier, and a written entry was not necessary to establish such prescription."

Medomak Bank vs. Curtis, 24 *Me.*, 36.

Head note:

"If the cashier of a bank enters into a contract in behalf of the corporation without authority for the purpose, and the bank claims the benefit of the contract, it is thereby *ratified* by the corporation."

Caldwell vs. National Mohawk Valley Bank, 64 *Barb.*, 333.

Head notes:

"In all transactions in which a bank may lawfully engage, the cashier is the managing agent and speaks for the corporation."

"Any verbal understanding between the cashier and directors will not avail to limit his authority, when his acts are performed over the counter of the bank, and are of a public character, and numerous and long continued. In such a case it is reasonable to presume that his acts are in conformity with the instructions of the directors."

"The bank will also be bound by the acts of the cashier, if the directors either through *inattention or otherwise suffer the cashier to pursue* a particular line of conduct for a considerable period without objection."

Robinson vs. Beale, 20 *Ga.*, 275.

Head notes:

"*Sixth*—On the question whether the cashier of a bank has authority to issue a certificate of deposit, other acts of a similar kind frequently done by him are admissible as evidence."

"*Eighth*—Although the act of the cashier of a bank in making with the stockholders of another, but unorganized bank, an arrangement to enable them to organize their bank in evasion of an important provision of their charter, is an illegal act; still, if it be an act done by the cashier not for himself or his benefit, but for his bank and its benefit, and an act beneficial to his bank, and one that was known to its directors, or which, if not known to them, had for the cause of its not being known, that they neglected to bestow ordinary attention on the duties of their office, and which act, yet, those directors did not repudiate or expose to the public, or in any way neutralize it, is the act of the bank."

Bridenbecker vs. Lowell, 32 *Barb.*, 9.

Head notes:

"Where a bank places notes, of which it is the holder, in the hands of an indorser to be used by him in obtaining an indemnity from the maker, it thereby consents to be bound by the indorser's acts, and, to that extent, constitutes him its agent."

"The cashier of a bank, as its executive officer, has authority to take such measures for the security and eventual collection of the debt as he deems proper, and to act in reference to the collection or compromise of the same, according to the general usage, practice and course of business."

"In the absence of evidence that a cashier of a bank was restricted in his authority, it will be assumed that a transmission of promissory notes held by the bank, to the indorser, to enable the latter to obtain an indemnity from the maker, was within the scope of his authority."

"When a bank for the purpose of enabling an indorser of notes held by the bank to obtain payment or security from the maker, transmitted the notes to the indorser, who thereupon made an arrangment with the maker by which property was transferred to the indorser for the payment of the notes, and the notes were surrendered up to the maker to be cancelled, and the bank on being informed of what had been done, accepted a *part* of the fruits of the arrangement without objection, and had never repudiated the transaction or reclaimed the notes, *it was held* that the bank had by such subsequent acts and acquiescence ratified the acts of the agent."

"If a person authorizes another to assume the apparent right of disposing of property in the ordinary course of trade, it must be presumed that the apparent authority is the real authority, and he

may bind his principal within the limits of the authority with which he has been apparently clothed."

Bank of Illinois vs. Dunlap, 17 *Illinois*, 40.

Head notes:

"The cashier of a bank, in conformity with the practice and rules of the institution, may release a debt secured by mortgage in its favor. Nor need such release be under seal."

"A mortgagee being a banking institution, by its servants and agents may do all such acts in respect to the debt as usually may be done in money transactions, verbally or in writing, without regard to mortgage security."

"Payment of a debt secured by mortgage may be made otherwise than by the delivery of money, and the entry of satisfaction on the margin of the record of the mortgage is not required."

"Corporations are presumed to have agents and servants acting for them in the usual course of dealing. Within their powers and their acts, should bind their principals."

Bank vs. Warren & Storrs, 7 *Hill*, 91.

Head notes:

"A creditor, in order to redeem from a bank, went to the banking house during business hours and tendered the money to the cashier, who accepted the same.

"*Held*, that he acquired the title of the bank, though the affidavit of the amount due on his judgment presented to the cashier was invalid.

"*Held, further*, that the authority of the cashier to transact the business on the part of the bank must be presumed, until the contrary expressly appeared.

"Even had it appeared that the cashier was forbidden by the bank to transact such business, the redemption would have been valid.

"The presumption of authority on the part of the cashier will not be overcome by evidence that the board of directors had passed no resolution on the subject."

Norton vs. Bull, 43 *Mo.*, 113.

Head notes:

"The authority of an attorney in fact of a bank to receive lands in satisfaction of drafts held by the bank, may be shown, without proof of his appointment, by a resolution or by-law of the board

of directors. It may be *inferred from the acts and conduct* of the parties. When the subsequent holder of the drafts accepted a transfer of the lands that were given in satisfaction thereof, and sold the lands under judicial proceedings against a prior indorser, and received the proceeds of the sale, such acts are *amply* sufficient to show a ratification, by the holder, of the authority of the agent.

He cannot repudiate such an agreement between the drawer and the agent of the bank, even when made without his full *knowledge and consent*, and bring suit against the drawer for the remainder of the drafts unsatisfied, unless the drawer be placed in as good a situation as when the lots were conveyed to the agent."

We quote from the opinion:

"The lots were conveyed by Alexander to the plaintiff since he became the holder of the drafts, and he has had them sold by a judicial proceeding against Ranlett, and has *received the purchase money*. Having received all the *benefits* of the transaction, he *cannot* avoid the *charges* and *duties* imposed by it. It cannot be doubted that these acts are *amply* sufficient to show a *ratification*.

"But is contended that these acts were done in ignorance of the full nature of the transaction with Alexander. It is undoubtedly true that a ratification, to be valid, must be made with a full knowledge of the transaction. But the plaintiff cannot *repudiate* his ratification without restoring the defendant to as good a situation as he was in when the lots were conveyed to Alexander.

"It would be most unjust for him to *retain the fruits* of the transaction and *not abide by it himself*. If the defendant cannot be placed in *statu quo*, it would be more reasonable and equitable to hold the plaintiff to the agreement which he may have *ignorantly* ratified, than the defendant, who was acting in good faith, should be subject to a loss or injury."

Citing authorities.

Edwards vs. Thomas, 66 *Mo.*, 468.

Head notes:

"The authority of an agent to act in a given manner may be inferred from the mere fact and nature of his employment, or from long continued and repeated acts of acquiescence by his employer."

"Third persons have the right to rely upon the statements of an agent as to the existence of such extrinsic matters relating to his agency as lie within his own peculiar knowledge."

Bigelow vs. Dennison, 23 *Vermont.*

"A promise to pay a note at a certain time if the plaintiff would wait, which note had been executed by an agent without authority,

is a ratification of the act of the agent in giving the note, even though the plaintiff does not wait for payment to the time stated."

Culver vs. Ashley, 19 *Pick.*, 300.

Head notes:

"If one of the parties to an unauthorized award performs it on his part and the other party accepts of such performance, the latter thereby ratifies the award and is bound to perform it on his part."

"After one of the parties have received the benefits of such an award, it seems he cannot repudiate it on the ground that he ratified it in ignorance of the facts, unless he can and does restore the other party to as good a situation as he was before the ratification."

The Court says:

"If the defendant assented to the award and recognized its validity in ignorance of the circumstances, he was bound, as soon as he discovered the facts, to notify the other party of his determination to rescind his ratification.

"And the omission to give notice of rejection has been deemed sufficient evidence of ratification."

Frothingham vs. Haley, 3 Mass. R., 70; Cairnes vs. Blecker, 12 John, 300.

Farmers Loan & Trust Co. vs. Walworth, 1 *Comstock*, 433.

We quote from the opinion:

"They knew, or were bound to know, that they had not a shadow of a title to both mortgages; that if they asserted their right to the first, they could have no right to the second; and if they took the second, they could have no further claim on the first.

"The alternative was thus fairly presented: whether they would disaffirm the act of the clerk and take the first mortgage, or whether they would adopt his act and take the second.

* * *

"It is true that the owners of the fund had the secret intention of falling back upon the first mortgage if the foreclosure of the second should not produce enough to pay the debt. They intended to adopt the act of the clerk so far as it was *beneficial* to them, and to reject the residue. That the law would not permit them to do. They had no choice but to take the whole or none; and when they confirmed the agency in part, they ratified the whole transaction. By foreclosing the second mortgage, they confirmed the discharge of the first. This principle is too just in itself and is so firmly settled that I need do no more than refer to one or two books where many of the authorities are collected. (Story's Agency, 250; Paley's

Agency, 172, Dunlap's Ed.) It would be strange, indeed, if the law would permit them to have the second mortgage to which they had no title whatever, except by affirming the act of the clerk, and yet allow them to reject that part of his act which induced the giving of that mortgage.

* * * "I am not aware of any rule, either of law or equity, which will permit a creditor to accept a pledge or other security for a debt, and yet repudiate the condition on which the security was given."

Perkins vs. Insurance Co., 4 *Cowen*, 645.

Head notes:

"One may become the agent of a corporation in the same manner as he may of an individual, without any deed or writing.

"Where a principal objects to the acts of his agent as unauthorized, the question is not what power he intended to give his agent, but what power the person who dealt with the agent had the right to infer that he possessed, from his own acts and those of his principal."

Troy Turnpike & R. R. Co. vs. McChesney, 21 *Wend.*, 296.

Head note:

"An agent of an incorporated company may receive authority from his principals otherwise than by a formal resolution. It may be collected from circumstances."

Summerville vs. Hann. & St. Joe R. R. Co., 62 *Mo.*, 392.

The Court says:

"The extent of the authority conferred on the agent is ordinarily known and ascertained *only by implication* from the recognition, or conduct, or acquiescence of the principal. And when the principal has recognized another as his agent by adopting and ratifying his acts done in that capacity, he will not be permitted to deny the relation to the injury of third persons who have dealt with him as such."

See also—

Kiley vs. Forsee, 57 *Mo.*, 390.
Smithgate vs. A. & P. R. R., 61 *Mo.*, 89.

U. S. Supreme Court, in C., R. I. & P. R. R. Co. vs. Howard et al., 7 *Wallace,* 392.

"Private corporations may borrow money * * in the transaction of their legitimate business unless expressly prohibited, and, until the contrary is shown, the legal presumption is, that their acts in that behalf were done in the regular course of their authorized business."

Windham Provident Institute for Savings vs. Sprague et al., 43 *Vt.,* 502.

The Court says:

"We think the by-laws empowered the *treasurer alone* to execute the promissory notes of the company. * * * We think the company, by appropriating the money obtained upon the note executed by Hammond J. Livermore, agent, so *ratified* his act, though before *unauthorized,* that the note became the *valid* note of the company."

Bissell vs. First National Bank of Franklin, 69 *Pa. State,* 415.

Head note:

"The cashier of an incorporated bank is the general executive officer to manage its affairs in *all* things not *peculiarly committed to the directors* by the charter. He is the agent of the corporation and not of the directors."

Smith vs. Smith, 62 *Ills.,* 493.

Head note:

"The by-laws of a corporation are private and only accessible to the officers of the company. Strangers to the company *cannot be bound* by the rules adopted for the government of the company."

The Wood Hydraulic H. & M. Co. vs. King, 45 *Ga.,* 34.

"But we are of opinion that if a corporation actually receive the use of money advanced by another, it cannot set up want of authority in its charter to make the contract. It would be *outrageously unjust* to permit a corporation to thus practice fraud upon one dealing with it.

* * * "Where the objection is that the officers or agents have exceeded, not the powers of the corporation but their own

powers as agents. . . . . In such case they stand like all other principals employing agents, and if they knowingly receive the fruits of the excessive exercise of authority by their agents, they are held *to have ratified the act.*"

Perry vs. Simpson Waterproof Co., 37 *Conn.*, 520.

Head notes:

"The president, merely as president, has no power to bind the corporation by any act of his aside from his official duties.

"*Second*—The president, like any other person, may be constituted an agent for the transaction of its business, and his authority to act may be proved by charter or by-laws, a direct vote of the corporators or board of directors, *or by usage acquiesced in by the corporation.*

Third—A corporation will be bound by the unauthorized acts of its president if it subsequently *ratifies* those acts, or conducts itself in reference to them as that it ought to be estopped from denying his authority. And generally the *doctrine of estoppel will apply when it receives and retains the benefit of the contract.*"

Phillips vs. Campbell, sheriff, 43 *N. Y.*, 271.

The Court says:

"Bramhill was the treasurer of the United States Rubber Company. The by-laws did not confer upon the treasurer power to make this sale. But it was abundantly proved that he had *been in the habit of doing such business,* * * in fact, the sole management of the company; and his authority by its uniform course of business was ample. This was sufficient."

Numerous other cases might be cited to the same effect as those given above; but we shall content ourselves with referring to one more decision of this Court, which appears to us to cover every proposition in this case, viz:

The Merchants National Bank vs. The State National Bank, 10 *Wallace*, 604.

Head notes:

"The habitual exercise of power by the cashier of a bank, with the knowledge and acquiescence of the bank, establishes as to the public the *existence of such powers* as fully as the same could be established by the order of the board of directors.

"*Second*—If the cashier of a national bank buy coin *without au-*

thority and it goes into the funds of the bank, the bank is liable therefor upon the principles of *quantum valebat.*

"*Third*—If a contract with a national bank can be valid under any circumstances, an innocent party has the right to presume the existence of such circumstances, *and the corporation is estopped to deny them.*

"*Fourth*—The rule that those who create a trust and appoint a trustee and clothe him with powers which enable him to mislead, shall suffer from the misconduct of such an officer rather than another party, is applicable to the transaction of a cashier of a national bank.

"*Seventh*—The cashier is the general executive officer of the bank. His power may be limited by order of the board of directors; but such limitation will bind only those who have knowledge thereof.

"*Eighth*—It is not essential to the validity of the act of the cashier that it should be done at its place of business."

The Court, in their opinion, say:

"When a party deals with a corporation in good faith; the transaction is not *ultra vires*, and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists.

"If the contract can be valid under any circumstances, an innocent party in such a case has a right to presume their existence and the corporation is estopped to deny them. The jury should have been instructed to apply this rule to the evidence before them. The principle has become axomatic in the law of corporations, and by no tribunal has it been applied with more firmness and vigor than by this Court. *Supervisors vs. Schenck*, 5 *Wall.*, 784; *Knox Co. vs. Aspinwall*, 21 *Howard*, 539; *Bissell vs. Jeffersonville*, 24 *Id.*, 288; *Moran vs. Commissioners*, 2 *Black.*, 722; *Gelpeck vs. Dubuque*, 1 *Wall.*, 203; *Mercer Company vs. Hackett*, 9 *Id.*, 93; *Mayor vs. Lord*, 9 *Id.*, 414; *Royal British Bank vs. Turquand*, 6 *El. and Bl.*, 2 *B. & Ex.*, 327; *The Farmers' Loan and Trust Company vs. Curtis*, 3 *Selden*, 466; *Stoney vs. Am. Life Ins. Co.*, 11 *Page*, 635; *Society for Savings vs. New London*, 29 *Conn.*, 174; *Commonwealth vs. Alleghany Co.*, 37 *Id.*, 287; *Commonwealth vs. City of Pittsburgh*, 34 *Pa. St.*, 497.

"Corporations are liable for the acts of their servants while engaged in the business of their employment in the same manner and to the same extent that individuals are liable under like circumstances. (Citing numerous authorities.)

"Estoppel *in pais* presupposes an error or a fault and implies an act in itself invalid. The rule proceeds upon the consideration that the author of the misfortune shall not himself escape the consequences and cast the burden upon another. (Citing authorities.) Smith was the cashier of the State Bank. As such he approached the Merchants' Bank; the bank did not approach him. Upon the faith of his acts and declarations it parted with its property; the

misfortune occurred through him; and as the case appears in the record, upon the plainest principles of justice the loss should fall upon the defendant. The ethics and the law of the case alike require this result. (Citing authorities.)

"Those who created the trust, appointed him the trustee, and clothed him with powers that enabled him to mislead, if there were any misleading, ought to suffer rather than the other party. (Citing authorities.)

"In the *Bank of the United States vs. Davis*, 2 *Hill*, 465, Nelson, Chief Justice, said:

"'The plaintiff appointed the director and held him out to their customers and the public as entitled to confidence. They placed him in a position where he has been enabled to commit this fraud. The director had fraudulently appropriated the proceeds of a bill discounted for the drawer. It was held the drawer was not liable.'

"The reasoning of Justice Selden in *The Farmers' and Mechanics' Bank of Kent Co. vs. The Butchers' and Drovers' Bank*, 16 *N. Y.*, 133, is also strikingly apposite in the case before us. He said: 'The bank selects its teller and places him in a position of great responsibility. Persons having no voice in his selection are obliged to deal with the bank through him. If, therefore, while acting in the business of the bank and within the scope of his employment, so far as known or can be seen by the party dealing with him, he is guilty of misrepresentation, ought not the bank to be responsible?'

"The same principle was applied in the *N. Y. & N. H. R. R. Co. vs. Schuyler*, 34 *N. Y.*, 30.

"It was explicitly laid down by Lord Holt in *Howe vs. Nichols*, 1 *Salkeld*, 289. He said:

"'For seeing somebody must be a loser by this deceit, it is more reason that he that employs and puts trust and confidence in the deceiver, should be a loser than a stranger.'

"Smith, by his conduct, if not by his declarations, avowed his authority to buy the certificates and gold in question from the Merchants' Bank, and the bank, under the circumstances, had the right to believe him."

The Court further says in reference to a cashier:

"The directors may limit his authority as they deem proper; but this would not affect those to whom the limitation was unknown. (Citing numerous authorities.) * * *

"It is objected that the checks were not certified by the cashier at his banking house. The provision of the act of Congress as to the place of business of the banks created under it, must be construed reasonably. The business of every bank away from its office—frequently large and important—is unavoidably done at the proper place by the cashier in person, or by correspondents or other agents. * * There is no force in this objection. (Citing authorities.)"

STATUTES OF MISSOURI. 1879.

GENERAL AS TO CORPORATIONS.

"SEC. 731. Parol contracts may be binding on corporations if made by an agent duly authorized by a corporate vote, or under the general regulations of the corporation, and *contracts may be implied* on the part of such corporations, from their corporate acts *or those of an agent whose powers are of a general character.*"

Decisions:

The act of an officer or agent is the act of the corporation. (45 Mo., 419.) Authority of officer or agent may be *implied.*

61 Mo., 89.
42 " 74.
33 " 354.

AS TO BANKS ALONE.

"SEC. 906. The affairs and business of the corporation shall be managed by a board of directors or managers consisting of not less than three nor more than thirteen shareholders, who shall be elected annually. *Provided*, That no person shall be a director in any banking corporation authorized by the laws of this State, unless he be a *resident of this State.* That in the event of a vacancy happening in the board previous to the annual election, the remaining members thereof may fill such vacancy." Laws of 1877.

"SEC. 917. The directors may appoint or remove any cashier or other employee at pleasure."

He shall give a bond that the sureties will hold the bank harmless "for any loss occasioned by any act of such officer." Laws of 1877.

Mr. Story, in his work on Agency, Sec. 52, says: "Another exception upon the strict notions of the old common law is, that the agent of a corporation must ordinarily receive his appointment to do any act by an instrument under the common seal of the corporation. * * *

"It is now the settled doctrine, at least in America, that it may be *inferred* and *implied* from the adoption or recognition of the acts of the agent * * by the corporation. (Citing numerous authorities.) Thus, for example: If the cashier of a bank should openly act as such in all the common transactions of the bank, with the full knowledge and consent of the directors, his acts would be obligatory upon the bank, although there might be no written note to establish his appointment." (Citing authorities.)

He then proceeds to show that the English Courts are fast receding from the technical rules they have heretofore enforced. In Sec. 114, in speaking of cashiers, he says:

"In short, he is considered as the executive officer through whom and by whom the whole moneyed transactions of the bank in paying or receiving debts, and *discharging* or transferring securities, are to be conducted."

In the *Southern Law Review*, August-September, 1880, p. 424, is found a most severe criticism upon *Greene's Brices Ultra Vires;* the editor says:

"This work is a curious illustration of the practice which is still kept up in this country of republishing all sorts of English law books in the country with American notes. * * *

"It arose under a condition of things almost wholly different from that which obtains in this conutry; and there is no more sense in our Courts taking it up and following it than there would be in their taking up and following the decisions of the French Court of cassation with reference to the powers of *societes anonymes.*"

The doctrine of *equitable estoppel* that operates in this case has been sufficiently referred to, perhaps, in the foregoing authorities. Additional authorities might be cited *without limit.* We claim that the case cannot be produced when a party in a Court of equity can seek to avoid a contract and at the same time retain fruits and benefits that he has received therein.

"There is no rule of equity more universal in its application nor more just in its consequences, than that a party shall not claim in repugnant rights, and that he who takes the benefit shall also bear the burden." Leading Cases in Eq., Vol. 1, p. 407.

III.

ARGUMENT.

THE LIENS IN JUNE, 1879,

upon the lands were in a very unfavorable condition for the bank.

First—Two of its mortgages aggregating considerably over $12,000.00, principal and interest, were not signed by Kenny's wife. (Record, bottom p. 219)

Second—The county was calling for its funds that it had on deposit with the bank, (Record, pp. 138, 305,) and the bank was not able to pay—at least it did not pay on demand.

Third—Power had the *first* lien on 240 acres of the most valuable land, to wit: S. W. ¼ Sec. 3 and E. ½ of S. E. ¼ Sec. 4. He also had the second lien on the whole S. E. ¼ of 3, and the bank held three deeds of trust on this quarter section that were junior to the

Power deed. This land was liable to be sold by Power at a place where the bank could have no warning. (Record, 219, 220, 309.)

Fourth—The judgments were liens on all the lands, and on 480 acres they were the *second* lien. On other tracts of the very best land they were the *third* lien. (Record, 219, and abstract p. 309.)

While on a part of the lands there were as high as *seven* distinct liens.

There has been a partial denial of the judgments being liens. This would be immaterial as to the complainants, as they were represented to them to be such, and as such, Tomlin asked that they should be paid off. (Record, 219, 220.)

And they submitted to this request and acted under his direction.

But that the judgments were liens, either because the original lien had not run out or because they had been revived, there can be no question under the evidence introduced. After the question had been raised, Tomlin swears positively they were liens. (Record, 220.)

Fifth—Tomlin testifies, that in justice to the business of the bank he did not think he should advance the money to take up these prior liens. (Record, 220.) He says that he wished to get a lien also on all of Kenny's land and obtain a trust deed signed by the wife. (Record, 219.)

That the Power deed was secured beyond *all possibility* of doubt is not denied. The complainants removed that mortgage. Now, if this had been done through inadvertance or mistake, and not at the instance or request of the bank, plaintiffs in equity would be subrogated to the rights of Power. There can be no denial of this proposition. They are in no worse condition. There is no question as to $5,200.00 of a prior lien here that they have no right to object to. The same reasoning may be applied to the judgments, as there can be no question but that they were amply secure.

The remainder of the money the bank received itself. So that *every dollar* of this money has gone for its benefit and use.

The defendants then have suffered *no injury*, while they have been *greatly benefited* in the particulars named by Tomlin. The prior liens they have to pay to-day are no more than they would have been compelled to pay had these complainants not come to their aid. But it is said that the mortgage to Frank & D., of $1,000, is a burden added. This $1,000 is 2 per cent. per annum that they were paying in extra interest on the other loans, or at least most of them. That the bank, holding as it did, $36,000.00, divided upon the lands in the shape it was, and the many disadvantages that surrounded them, ought to be willing to give one, two, or possibly three thousand dollars out of their $36,000.00 to get better security—and in a better shape on this bankrupt, we think is not at all unreasonable.

Suppose that Kenny had sold his land subject to the mortgages on June 1, 1879. The bank would have lost more than $3,000 on

account of the unequal manner in which its liens rested on the land.

And the land that it would get would be subject to the dower and homestead right of Mrs. Kenny.

We feel justified in asserting THAT THERE IS NOT A PARTICLE OF EQUITY in this defense. They all rest with the complainants, even if defendants were correct in saying that Tomlin had no authority, etc., etc.

IV.

The question is not what authority Tomlin *actually* had, but what *authority we had a right to believe he had.*

Conceding for the time being that it would be legal for the directors to give McFerran, a resident of Colorado, control of the bank:

First—Is such fact established?

Second—Did complainants know anything about it?

The fact is not established. The defendants' witnesses are Tomlin, Tuggle, McFerran, Hemry and Kenny.

It is a conceded fact that the president lived in Colorado Springs from 1873 to January, 1880. McFerran testifies, (Record, 238) "Hemry succeeded me as president on the first of January, 1880."

The power to *make contracts* and *cancel and satisfy* deeds of trust lay *somewhere* during these eight years. Now, from defendants' evidence, considered *alone*, where was this power?

Tuggle shows that so far as the *record* is concerned, that was kept by the bank; that the directors never took any action in reference to this matter. He has the record before him, and when inquiry is made concerning it, he says:

(Record, 229). "This book is a record of the proceedings of the board of directors. It does not show any meeting of the board or other officers of the bank for four years, from 1865 to 1869.

"As shown in this book, the meetings of the board of directors was *simply* for the purpose of *electing officers* and declaring *dividends.*

"Don't think there is anything in this book *fixing my authority as a director.*

"There is nothing in the book prescribing rules for the board of directors.

"There is *nothing* in this book that I know of that *placed the business of the bank under the supervision of Mr. McFerran.*"

This last statement is concurred in by *all* of defendant's witnesses. They do not pretend to claim that there is any record made by the board by which the business in any degree was placed in McFerran's charge. Again, they do not pretend that there ever was any act of the board of *any* kind placing it in his charge.

Tuggle said that he "*understood*" that McFerran would superin-

tend it. "That was my *supposition.*" (Rec. 229). And this is just as far as the witness goes on this point.

Hemry testifies that there was a conversation between McFerran, Tomlin and himself, and by this conversation he accounts for McFerran's authority. He says that Tomlin was to make "*semi-monthly* statements to McFerran." Now, of course, Mr. Tomlin could not make semi-monthly statements of what he *intended* to do. These semi-monthly statements then related to what he *had done* for the two weeks preceding. This of itself shows that these men, so far as this action was concerned, gave Tomlin the power to transact *all* the business of the bank, and the only restraint placed upon him was that he was to make "semi-monthly statements."

To construe this as liberally as can possibly be claimed, it cannot be pretended that McFerran had the power to *undo* anything that Tomlin had already done. If Tomlin had made a loan it is not claimed that McFerran, upon its being reported, could annul the transaction.

We can understand why McFerran, who is interested in dollars and cents in the bank, would wish to be advised as to what it was doing; but that is all there is in the arrangement. But Hemry further testifies:

"*I don't know that any record was made of the arrangement, and no notice was given to the public.*" (Rec., bottom p. 250.)

Tomlin testifies in relation to this transaction (Rec. 217), as follows:

"I kept up a correspondence with McFerran, and made statements of the condition of the bank every fifteen days—that is, statements of its *resources* and *liabilities.* My standing instructions *from McFerran* were to render to him semi-monthly statements of the condition of the bank. He would wind up his letters with, 'keep me posted.'"

Now this is as far as this witness goes. There was no condition precedent to his doing any act. He was left at perfect liberty to act, but he was "requested" by McFerran to make him a statement of the *assets* and *liabilities* of the bank every fifteen days.

Tuggle knows nothing about the transaction, and Kenny does not testify in reference to it at all.

The only witness left on the point is McFerran. This witness was not cross-examined. His statements are all of the most general nature. They are made up entirely of conclusions. There are but very few facts stated by him.

Whether or not this Court would say that he aims to testify to the preposterous proposition that while living a thousand miles distant, in another State, where it would take from eight to ten days to get a letter from him, that still Tomlin had to submit matters to him as they came up, and receive his permission before he could act, we care not. If you conclude that his evidence attempts to establish such a proposition, then we answer, that aside from the entire inconsistency of such a theory, that he is the only witness that attempts to, or does, testify to any such thing. The preponderance

of the evidence upon his own side of the case is against him. Tomlin's and Hemry's evidence cannot be reconciled with any such theory.

What have we, then, established by the defendants' evidence? Viz., this: That Tomlin did have authority to transact *all* the business of the bank, of whatever kind, and the only limitation placed on him was that he was to report every fifteen days, as he says, "the assets and liabilities," or (to put it more liberally in behalf of defendants), what he had done.

But this is not all of the evidence throwing light upon this subject that is given by the defendants. We have only quoted them in relation to an alleged "arrangement," made by word of mouth between these parties. We will now see how *the facts* correspond with this theory. *Tomlin* (Rec., 226 and 227) testifies: "McFerran was *neither* an officer or director in 1879. He resided in Colorado. The laws of Missouri *excluded* him from such positions by reason of his being a non-resident." This is true. (See statute, p. 17.)

Now, we grant that Tomlin often states that he had no other authority than cashier. And right here appears to have been the great mistake of defendants. They have claimed that because a man was called a cashier, therefore he could not be authorized to do anything except certain things that always pertain to that office. Story on Agency, and Angell and Ames on Corporations, both lay it down as within the usual duties of a cashier to *satisfy securities.*

But even if this were not true, it is certain that the authority of the cashier may be increased indefinitely. This proposition cannot be denied.

Tomlin further testifies (Rec., 218 and 224): "*I conducted the business of the bank*, had charge of *all* business between the bank and its patrons, and *managed all* such business as *making contracts.*" (Rec., 218.) "From 1873 to 1880, when a man applied to the bank for a loan, giving trust deed, or made *payment* on *trust* deed, and wanted *part of land released*, or wanted to borrow additional money, or to *change* the form of his indebtedness, *I attended to such business.*"

By his own evidence he was the only one that transacted, or had authority to transact, such business; or was involved in this loan.

He made *all* the *contracts.*

He released *all* the *securities.*

He released them upon *partial payment* of the *debt.*

He changed the form of indebtedness. Is any other or further authority needed or involved in this transaction? If the Court is to believe Mr. Tomlin, the questions in this case are settled.

Tuggle testifies (Rec., 228):

"I was in the bank frequently, never gave much *attention* to the affairs of the bank.

"Tomlin *never consulted* me in reference to entering *satisfaction* of record on *deeds of trust.*

(Rec., 228). "Could not say whether we ever had *any meeting* of the *directors* prior to 1879.

"*I did not do anything* about running the affairs of the bank at the times I was in town.

"I would go in and *ask* the officers *how the bank was getting along. I never examined the books, money or notes* of the bank.

(Rec., 229.) "As shown by this book, the meetings of the directors was *simply* for the purpose of electing officers and *declaring dividends.*"

"When a man applied to the bank for a loan or to have a *deed of trust changed*, or the SECURITY changed, my understanding was that *Tomlin attended to it.*

"*I* suppose *Tomlin had been attending to such matters from* 1873 *up to the time this loan was made.*

(Rec., 229.) "I understood that deeds of trust were being given to the bank. I knew it was necessary to *cancel* deeds of trust in the course of the bank's business.

"I also knew that the business of the bank was *varied* and presented itself in *different* forms, and I understood that *Tomlin* was *properly* attending to this matter.

"I *never* questioned Mr. Tomlin's *right* to *cancel* a deed of trust from 1873 to 1879.

"Never knew of any other *director questioning* his *right* during that time.

(Rec., 229.) "Tomlin was acting cashier from 1873 up to the time this loan was made, and so far as I know, was transacting *generally all* the *business* necessary to be transacted at the bank.

"*Ques.* Who was acting as the *general agent* of the bank here in Gallatin from 1873 to 1879?

"*Ans. Mr. Tomlin* was cashier *and doing the business.*

"Don't know that he ever told me of canceling deeds of trust. I *understood* that he was *canceling deeds* of trust *whenever it was necessary.*" (Rec., 230.)

"Q. Suppose a man applied to the bank for a loan on a deed of trust and *afterwards gave other security and wanted these lands* released, who did you expect *would cancel the deed of trust* given and attend to the business? (Rec., 230.)

"A. I expected TOMLIN *attended to it.*

"Q. Do you suppose he had such *authority* from 1873 up to the time this loan was made?

"A. *I understood he was doing it.* I never thought much about it, and knew nothing about his authority.

(Rec., 230.) "Q. Now, suppose in 1878 a man should have come into the bank and wanted a deed of trust *canceled*, which he had given previously for a loan, and wanted to give a *new deed* of trust on *different* property to *secure that loan*, who did you expect to attend to that business?

"A. I think that question has been answered a time or two. TOMLIN *was doing the business of the bank.*"

This was a man who was a director all the time—was, and is, county judge; and if any stronger evidence could be introduced,

showing authority in Tomlin to do just exactly what he did do, we are at a loss to know what it would be.

Hemry, whose dishonesty is apparent, fills his examination-in-chief with conclusions and evasions. There are no facts testified to by him, but he simply informs the Court as to what he thought and what he "understood" and what he "supposed." It falls but little short of an insult to the Court and common decency that this man, who claims to have been a director of the bank from 1873 up to 1880, and never did *anything* toward controlling it; who cannot specify a *single act* of authority exercised by him; who knowingly allowed Tomlin to be held out as having full authority in *all* business of the bank—should now offer his private "understanding" and his "conclusions" to cheat men out of money that they have advanced in the most perfect good faith.

He has no redeeming quality. The James brothers, when they undertake a robbery, assume some personal risk; but this man can claim no such glory. His conduct is that of a dastard.

On cross-examination we do gain from him a few facts. (Record, 249), he says:

"I have been a director of the bank since 1873, and during this time have *never known of any* such matters as *passing* on *loans* in favor of the bank, or *directing the satisfaction* of same on *any deed of trust*, or in relation to the *taking or releasing of its securities, ever coming before the directors.*

"The board of directors have *never made any rules* in relation to the *cancellation* of securities or approval of loans." (Record, 250.)

He is then asked if Tomlin did not pass on *all securities* from 1873 to 1879, and he answers, "*I don't know.*" He attempts to avoid by saying that *he* relied on McFerran. He is then asked (Record, 250), to point out a single instance where McFerran ever *cancelled* or released a security in these seven years, and being unable to give one, he dodges again by saying he was never present.

You are asked to take from us $10,000 and give it to this honest man, Hemry, simply because he "relied on McFerran" attending to the business.

But the witness is asked this question (Record, 250):

"Did you, or do you know of *any other* of the directors, prior to the time you were made president, *directing, or assuming* to direct, the taking and *releasing* of securities of the bank?"

"*Ans. I did not myself as director, nor do I know of any other individual director directing as to the releasing of securities. To be very particular, I don't think of any particular case in which I directed or advised.*"

(Record, 251.) "Knew of *no necessity* of calling the board of *directors* together *prior* to 1879 to consider the discounts of the bank and the *security* for the same, or the *releasing of the securities.* There was no *difficulty* arising in such matters during the time."

This man thinks it is proper and right to allow the bank to move along for eight to ten years under the sole guidance and control of Tomlin, the directors not having a word to say. But when the

chance comes to take in $10,000, then a "difficulty" suddenly arises, and for the first time the authority of Tomlin is questioned.

Kenny swears that, so far as he knew, Tomlin always run the bank; that he had very frequent transactions with the bank, and did not know during the time *who the directors were.* (Record, 246.)

McFerran does not attempt to deny that Tomlin did *all* the business. He does not point out a *single instance* in the seven years where he directed or controlled Tomlin in the least. To be sure his conclusion is directly contrary to the facts stated by other witnesses, and is not sustained by a single instance of fact on his part.

Now we ask from this evidence who had the authority to release the securities on the part of the bank, to take new securities for the old loans, and transact generally the business of the bank?

This power lay somewhere; and all agree that it was not and never was in a single case exercised by the board of directors. Does this evidence show that it belonged to Tomlin or McFerran? According to our view of the matter, but one answer can be given.

McFerran Lived in Colorado.

By the law of Missouri, he could have no part in the government of the affairs of the bank. That law prohibits him from being *one* of *many* who might control the bank. The object and intent of the law is clearly to prohibit a non-resident from having any share in the control of a bank in Missouri. The defendants tell us not only did McFerran have a share in the control, but that he had sole control of the bank. Will they be permitted to offer such a palpable violation of law as a defense?

But what knowledge had complainants of this arrangement? Hemry tells the Court that the public was never informed of it. There was nothing to put them on their guard. Tomlin appeared to have the entire control. We had to presume that they were violating the law by placing the bank under the control of a man in Colorado; and also presume that there was some secret arrangement between him and Tomlin by which Tomlin's apparent authority was limited. All of these propositions are clearly contrary to the law.

V.

complainants' evidence reviewed.

So far we have presented the case solely upon the showing made by the defendants, and the facts we have been able to draw from them by cross-examination. Under the showing made by them, we insist the equities are shown to be with us.

We shall now call your attention to the *complainants' evidence showing authority on the part of Tomlin.*

Besides the record evidence, we introduce Abell, Gillihan, Brosius, Miller, Brown, Davis and Darrow.

Abell testifies (Record, 144): That he has been a resident of Gallatin for 22 years; has known the bank since its organization; that Tomlin has been its cashier for 10 years; that since January, 1881, Hemry has been signing his name as cashier and president; that McFerran has lived in Colorado since 1873; that for the last six years Tomlin has seemed *to do all the business.* (Record, 145.) That witness has been recorder of the county for the last six years; that McFerran made (or signed) deeds for the lands sold, but "*all other business done in my office was done by Tomlin.*"

"In one or two cases I know that Tomlin made the contract in regard to the sale of the land.

"As far as I know, *Tomlin* has, during the *last six years,* handled and *controlled* the funds of the bank—its *notes, mortgages, deeds of trust; taken its securities,* and RELEASED the same, and had the *general management* of the business.

"In the year 1880, Hemry made (signed) two deeds that I remember of, and he is the *only person except* TOMLIN that I know of having *anything to do with the business of the bank from* 1873 *up.*

"In the winter of 1872 and 1873, or 1873 and 1874, I was collector of this township, and had my office in the bank. During the last six years have been in the bank every day, for a while, and sometimes might not be in for a week.

(Ab., p. 4.) "This is book H of Trust Deed Records of Daviess county, Missouri.

"This book has a printed form. I will give you a copy of one of the deeds."

This copy is attached to the deposition marked exhibit "A," to which the Court can refer if it desires to acquaint itself with the form used.

"I will turn to such deeds of trust as have been *satisfied* by the *Daviess County Savings Association* through their cashier *Tomlin, or any other* person or officer, and give date of deed, name of parties, amount, page of record, and *acknowledgment of satisfaction in the language* used on the record."

The witness here gives

OVER ONE HUNDRED AND SIXTY SATISFACTIONS,

All satisfied by Tomlin, as cashier, and no one else. Said acts running regularly through *all* years from 1873 up to 1880. These satisfactions are to be found in record from page 148 to page 169, inclusive. We shall call the attention of the Court only to a few of them.

(Record, 149.) "One trust deed dated April, '73. Wirt to Bank. Amount $4,000.00. Book H., p. 10.

"Received satisfaction *in full* on *nine acres of land sold by W. E. Wirt to James Rogers.* Sept. 11, '74. To wit: Beginning at s. w. cor. of s. e. ¼ of n. e. ¼ sec. 8. (Particularly describing the lands.)

"R. L. TOMLIN, *Trustee.*"

There are *three* other partial satisfactions, and then follows:

"Received satisfaction in full on this deed of trust, Nov. 22, '75.
"R. L. TOMLIN,
"*Cashier Daviess Co. Sav. Ass'n.*"

(Record, 150.) "One dated Aug. 27, '73. C. C. Weston et al. to Bank; $400; p. 40.

"April 8th, '76. In *consideration* of the sum of $199.00, the receipt of which is hereby acknowledged, the within mortgage is *satisfied in full* as to the s. w. ¼ of n. w. ¼ of sec. 21, twp. 59, r. 27, and the *same is hereby released.* R. L. TOMLIN,
"*Trustee and Cashier, D. C. S. A.*"

(Record, 151.) "One dated Feb'y 14, '74; Hughes to Bank; $1,400; p. 104.

"Received *satisfaction in* FULL of this trust deed *so far as the same is a lien* as to s. w. ¼ of n. w. ¼ of sec. 14, twp. 59, r. 29. Sept. 5, 1875. R. L. TOMLIN,
"*Trustee and Cashier, D. C. S. A.*"

Then follows: "Received satisfaction in full of the within deed of trust, May 14, 1877. R. L. TOMLIN, *Cashier.*"

(Record, 154.) "One dated February 13, '75. Briggs to Bank. $98.65.

"For value received, the Daviess County Savings Association *assigns the annexed* deed of trust to *Wm. E. Gunby,* without recourse on it. June 12, 1875. R. L. TOMLIN, *Cashier.*"

(Record, 159.) "One dated March 2, 1875. Roberts to Bank; $1,856.00.

"In consideration *of a credit on the note,* which the annexed *deed of trust secures,* I hereby RELEASE the n. w. ¼ of the s. e. ¼, sec. 28, twp. 60, r. 28, in said deed of trust. R. L. TOMLIN,
"*Trustee and Cashier, D. C. S. A.*"

(Record, 161.) "One dated Nov. 12, 1875. Johnson to Bank; $158.15.

"The annexed deed of trust is this day *satisfied* by OTHER SECURITY *being given* by Levi Johnson to *secure the debt therein described.*
July 23, 1878. "R. L. TOMLIN,
"*Trustee and Cashier, D. C. S. A.*"

(Record, 163.) "One dated February 16, 1876. Cole to Bank; $1,082.

"*Except* as to the n. w. ¼ of s. e. ¼ of sec. 34, twp. 61, r. 27, this trust deed *is hereby satisfied in* FULL, this August 16, 1879.
"R. L. TOMLIN,
"*Cashier Daviess Co. Sav. Ass'n.*"

(Record, 173.) "On page 165, book N, of State Records: Deed of trust, Briggs to Bank, dated August 12, 1879; amount $262.20.

"The annexed trust deed is SATISFIED as to lots 1, 2 and 3, in block 28, therein described, on payment by *John Sutton* of $75, *June* 26, 1880.

R. L. TOMLIN,
"*Cashier Daviess Co. Sav. Ass'n.*"

(Record, 174.) Then follows: "This trust deed is SATISFIED as to lots 6 and 7, in block 27, therein named, on *payment* by H. Briggs of *Twenty-Five Dollars.*

R. L. TOMLIN,
"*August* 16, 1880. *Cashier Daviess Co. Sav. Ass'n.*"

Here are numerous acts involving the *very same power* exercised by the cashier in this transaction. They run through the whole course of these seven years, some near the time and some of them after the date of this loan.

These acts were entered upon the *public records* of the county. Can this bank, in the face of these entries, deny the authority of Tomlin?

Miller testifies (Record, 170): That he has lived in Gallatin 17 years; his place of business is next to the bank; that he was in there almost every day. "From '73 to '79 Tomlin seemed to have charge of the money of the bank. So far as I could see, *Mr. Tomlin had the general management and control of the bank.*"

Gillihan says (Record 171): That he had lived in Gallatin for 20 years; that Tomlin was cashier from 1873 up to January, 1881.

"Hemry has resided most of the time for the last four or five years in *Caldwell* county."

Tuggle lives eight or nine miles from town.

"Aside from the election of officers, don't know of the *directors ever attending to any* business of the bank."

(Record, 172). "McFerran lived in Colorado from '73. *Tomlin had charge* of the bank from that time. He had *control* of it—handled its funds, *made its contracts*, took and *canceled* its deeds of trust, and *transacted in* general *all the business* which might come up."

(Record, 172). "From '73 up to the last of August, '79, do not know of McFerran *participating* in or *conducting any* of the business of the bank."

"During this time I remember a case where Tomlin *released* the *lands* of Wirt, or a part of them, *from a deed of trust*, when the *debt* secured by such deed *was not paid!!*"

(Record, 171 and 183). "I remember a case where the bank held a deed of trust on Preston, which was *satisfied* and *released* by taking a *new deed.* The first one was satisfied by taking a *new deed*, and *that one* was satisfied by still taking a *third.*"

(Record, 184). "Tomlin said that to pay off all the liens on the Kenny land prior to the bank's, would take more money than the bank could easily spare.

"Don't think I ever heard of any question being raised by the

bank as to Tomlin's right to cancel any of the deeds referred to in Book H."

(Record, 184.) "Tomlin came to me and asked if I knew what book the 'Saylor case' was in. I gave it to him. This was about the time of the meeting of the board in February, 1880."

(Record, 185.) "I never saw the directors exercise any control over the business and affairs of the bank."

BROSIUS TESTIFIES:

(Record, 186.) "In 1873 McFerran went to Colorado and has resided there ever since. I have resided in Gallatin for 31 years. For the last seven years, until within the last six months, I have been in the bank almost every business day and sometimes five or six times a day. Robert L. Tomlin had charge and control of the moneyed affairs of the bank almost exclusively during that time. He has taken and *released* its securities *all* that time. I have superintended the satisfaction of from 50 to 100 trust deeds. Tomlin satisfied them in every instance."

(Record, 187.) "I have known Tomlin in *several* instances to *release* deeds of trust when only *part of the debt* they secured was *paid*, and allow other parties to take a *first* lien, he then filing a SECOND deed of trust in favor of the bank, or taking personal security for the unpaid balance. From 1873 up to the time Tomlin left the bank I never *knew* or HEARD of any other person or officer acting or assuming to act for the bank, releasing or satisfying deeds of trust, controlling or handling the assets of the bank, or having ANYTHING TO DO OR SAY in relation to the business of the bank or the release or transfer of its securities."

(Record, 187.) "In making the loan the express agreement was, that the loan was made for the accommodation of the Daviess County Savings Association, and that it would *father the loan*. And while not expressed that it would guarantee the loan, it was understood that it would do so. Tomlin gave as his reasons for making the arrangement that *the bank* NEEDED *some money;* that Kenny could not pay it in any other way."

BROWN TESTIFIES:

(Record, 188.) "I have lived in Gallatin sixteen years."

(Ab., p. 59.) "It was the custom and the practice of the cashier, Tomlin, for the past seven years to satisfy all deeds of trust and other securities paid by me. I have had a great many transactions with the bank. W. E. Wirt is my brother-in-law."

(Record, 188.) "I recognize this deed of trust in book H, p. 10, given to the bank. I find several entries in my handwriting. My recollection is that the WHOLE DEBT, secured by the deed, WAS NOT PAID AT ONE TIME; there being *five* entries of satisfaction on the margin. As a *piece* of land would be SOLD the proceeds would be applied on the debt, and entry of SATISFACTION AS TO LAND SOLD would be signed by R. L. Tomlin, Cashier and Trustee. From

1873 to January, 1881, never heard of any objection being made by the directors or any other officer to Tomlin's releasing or satisfying securities. Never knew of the directors doing anything or releasing securities held by the bank. As far as I know, Tomlin had charge and control of *all business* connected with the bank from 1873 to January, 1881. Think Tomlin was a director as well as cashier."

(Record, 189.) "Tuggle lived 10 or 12 miles from this place and was a farmer. Hemry lived near the line between Daviess and Caldwell counties."

DAVIS TESTIFIES:

(This witness was present when Tomlin satisfied the deeds of record.) "Upon the margin of each deed was the following entry: 'I hereby acknowledge full satisfaction of the debt and interest secured by this deed of trust, this August 6, 1879. R. L. Tomlin, Cashier Daviess County Savings Association.' Duly attested by the Recorder."

(Record, 127.) He says: "Lew E. Darrow, *under the direction of Tomlin*, cashier Daviess County Savings Association, *paid off the judgments* by drafts of about $1,600 or $1,700."

He also says that after Darrow had filed his two deeds of trust, "Tomlin then filed a deed of trust given by Kenny and wife to bank, which deed has

THE FOLLOWING CONDITION:

(Record, 128.) 'This trust deed is made subject to a trust deed to Lew E. Darrow, dated July 1, 1879, and also to a trust deed to David W. McNair, dated July 1, 1879, so far as relates to the lands included in said two trust deeds, both of which are of record in the office of the Recorder of Deeds of Caldwell county, Mo.' "

DARROW TESTIFIES:

(Record, 257.) "Have known Tomlin since 1875 or 1876. Became acquainted with him by meeting him at his bank, the Daviess County Savings Association. He was in charge of that bank when I became acquainted with him, and continued in charge of it up to and after the commencement of this suit. I frequently visited Gallatin, and usually met Tomlin in his bank. He had the *sole charge and general management* of the Daviess County Savings Association."

(Record, 258, 274.) "This letter, dated July 1, 1879, was received from Gillihan & Brosius: 'We inclose application of P. S. Kenny for $12,000 on his sheep ranch. * * The Daviess County Savings Association *will release* OLD *trust* DEEDS, and take SECOND *lien* for their debt.' July 5th they wrote us: 'The D. C. S. A. intends to see interest paid.' "

(Record, 258, 276.) "July 23, 1879. R. L. Tomlin, cashier Daviess County Savings Association, wrote us, among other things, 'I will see that the house is insured for $3,500, and the interest of *this bank* is such that the bank *must protect your loan, both interest and*

principal, should Kenny fail to do so. * * It will never let the place sell. * * The Ryan judgment and the Breckenridge Bank judgment *can be paid to the Circuit Clerk at Kingston.* R. L. Tomlin, cashier.'

"In our answer to Tomlin is this sentence: 'As we look upon it, *the loan is virtually to your bank*, unless by some good fortune Kenny should have unusual success.' " (Record, 277.)

(Record, 258, 278.) "In Tomlin's letter of July 28, 1879, he says: 'You make out new papers for the $10,000 to Kenny, leaving out the three R. R. forties. Wish you would come through St. Joe and find out what is due on *Power note; then you can retain money to pay that debt* until Smith is prepared to hand over deed of release. As to trust deeds I bought in from other parties, such as Quirk, Musser and Barnum, *I can satisfy* the records as their assignee and *cancel the notes* and then leave them in your possession if you wish, though I am satisfied I have a *perfect right* to enter satisfaction upon the records. I will write Kenny to-day *advising* him of the revival of the matter on this *new basis.* R. L. Tomlin, cashier."

(Record, 259.) "All the deeds of trust held by the bank Tomlin told me he had the full authority and right to cancel the same of record. The three judgments were liens on Kenny's land, and *shown to be liens* by the *abstract* furnished me by Kenny and *Tomlin.*"

(Record, 259.) "I paid Tomlin, as cashier, $3,000 of this $10,000 loan, and it was talked that this was to be applied on the debt of Kenny to the bank."

(Record, 259, 279.) "August 9th we wrote Tomlin, 'we inclose draft for $201.14, balance of the Kenny loan, as per memorandum:

Amount of Loan	$10,000 00
One month and six days interest	100 00
Making a total of	$10,100 00

We paid Clerk Caldwell County	$1,689	86
We paid for recording trust deeds	4	00
Paid you cash	5	00
Paid you drafts	3,000	00
We hold to pay Power claim	5,200	00
All of which, with amount inclosed	201	14
Makes amount of the loan	$10,100	00

(Record, 259.) "I have given a list of the liens. They were all to be paid off and cancelled. Those held by the bank were to be made inferior to deed of trust given to secure the plaintiffs and the one to Frank & Darrow. This was fully understood and agreed to by Kenny, Tomlin and myself, and was the *only condition* on which plaintiffs would make the loan."

(Record, 260.) "The plaintiffs paid $10,000, every dollar of which was applied on the indebtedness of Kenny to the bank, and to pay the judgments and Power deed of trust. Kenny did not receive one cent of the money. It was applied under the direction of Tomlin."

(Record, 260.) "The interest due on this loan January 1, 1880, we received by draft of the Daviess County Savings Association from Tomlin, cashier. He says: 'I inclose draft, $500, *to pay the interest on P. S. Kenny.* Please *return interest coupon to me, as I will have to hold it against him* until the sheep are sheared. R. L. Tomlin, cashier."

(Record, 261.) "During the entire time of the negotiations concerning this loan, Robert L. Tomlin was in the *entire management* of the bank. I knew of no one else who had a hand in its management."

(Record, 261.) "I never saw any other person or officer in the employ of the bank but a clerk. I have been in the bank a dozen times at different periods within the past six years. He had as full control of the bank to all appearances as if it was *entirely his property.*"

(Record, 262.) "When the old deeds were cancelled he offered to turn over the original papers to me, but I told him they properly belonged to Kenny, and he promised to turn them over to Kenny the next time he came to Gallatin."

(Record, 263.) "I never knew who the directors were; never heard there were *any directors.*"

"I inquired into the business of the bank at different times, and of others than Tomlin. Gillihan & B. told me that Tomlin managed the bank and did all the business. Others in Gallatin often referred to it as '*Tomlin's bank.*'"

(Record, 264.) "I never found *any other* officer of the bank present at any time, and I *knew,* from *actual* knowledge, by seeing *releases* of record *made* by *Tomlin,* as cashier, that he had *released similar* deeds of trust on the records of Daviess county, Missouri."

Fearing that we shall tire the patience of the Court, we shall cease quoting evidence on this point.

Under the authorities cited, see—

Bridenbecker vs. Lowell,	p. 8	hereof
Daviess Co. Savings Association,	p. 4	"
United Soc'y of Shakers vs. Underwood,	p. 4	"
Bank of New Haven vs. Perkins,	p. 6	"
Caldwell vs. National Mohawk Bank,	p. 7	"
Edwards vs. Thomas,	p. 10	"
Perkins vs. Insurance Company,	p. 12	"
U. S. Supreme Court in Mer. Nat. Bank vs. State National Bank,	p. 14	"

And numerous other authorities cited. It is not a question whether Tomlin was actually authorized to cancel the deeds of trust, but did the bank hold him out as having such authority, or had we reason to believe that he had such authority? That there was

power vested somewhere to do this act will not be denied. Now, from its course of business, from all the circumstances in the case, what did the public have reason to believe? We say there is simply but one answer to this question.

AS TO THE ACTUAL AUTHORITY of Tomlin to make the contract and cancel the deeds, we claim it is not only established by the PREPONDERANCE of evidence, but that it is proven beyond ALL REASONABLE DOUBT.

Think for a moment upon the undisputed facts in the case!

First—There is nothing in the case to show that the president would have had power to say a word one way or the other had he been present. But from 1873 to 1880 he was a thousand miles distant. For SEVEN LONG YEARS he leaves the running of this bank to Tomlin. So far as the evidence shows, there is not ONE ACT in that time that he ever dictated or controlled. This case is to be determined on the *facts* and not the conclusions of any witness. For a man to swear that he was general manager of this bank when for seven years there is not a single act of management on his part, is simply absurd.

Second—The president being absent and depending on Tomlin; the directors do the very same thing. From the time of the organization of the bank down to the present, it is not claimed that there is a *single instance* in the record of the bank, or out of it, where the directors have ever taken upon themselves *any* of the duties of the bank. Are we then to arrive at the conclusion that everything that has been done in this bank is a nullity? Are the cancellations of these 160 trust deeds nullities?

Tomlin was all the time a director. They selected him and placed him in the bank as a *managing* director. They entrusted everything to his care and control. We call your attention to the fact that they reserved no power or rights to themselves. They say there was never any objection raised by any director at any time to Tomlin's acts. They further say, when this exact case is placed before them hypothetically, that they expected Tomlin to attend to such business.

Had any director, or the directors, attempted to control Tomlin's action in any matter of business, it would have been an infringement of the power vested in him by this uninterrupted manner of doing business.

Please bear in mind that the defendants have no settled theory as to where the power was vested to perform the act that Tomlin performed. Among the first depositions taken they talked about a board of directors, but after that learned gentleman, Judge Tuggle, had acquitted himself upon the witness stand, we have heard nothing about a board of directors since.

We call your attention to the fact that this theory is wholly abandoned. They now try to show that one James B. McFerran was possessed of the entire authority, and not the directors. The Colo-

nel is placed on the witness stand (there being no one present to cross-examine him) and he swears that he was "everything" to the bank. When the Colonel undertakes to consider himself in connection with the bank, he loses sight of the bank altogether.

We are not prepared to say that he should be criticised for it, for the bank is a very *small* institution in every respect. In its infancy we may suppose that he did much in its management. After this we believe it passed into the active and energetic management of the "James Brothers," and the Colonel took sanctuary in the "Garden of the Gods," in Colorado.

It is proper for us to say that the connection of the James Brothers with the bank ceased before this transaction. We do not wish to insinuate that they would be guilty of countenancing such a means of making money as the bank adopted in this case.

But the peculiarity of this last theory of the defendants, viz.: that McFerran, *and not the directors* of the bank, had the power, etc., etc., is three-fold at least.

First—It clearly shows that the *power* was not with the *directors*, but was to be exercised and was exercised by some other person.

Second—The laws of Missouri, under which the bank was acting, contemplated that the business should be managed by the directors; and it further declares that not *even one* of these directors shall be a non-resident of the State. It will not even permit the *one-thirteenth* of the management to be outside of the State, while these gentlemen, the laws of Missouri to the contrary notwithstanding, place the *entire management* of it out of the State.

Third—But the greatest peculiarity of this last theory is, that McFerran's authority as general manager and sole director and absolute dictator, is drawn entirely

FROM IMPLICATION.

The defendants themselves testify that there is no such power couched in *any record* of the bank. They also say that there was *never any act* of the board.

They have evidently arrived at the conclusion that such vast powers as are exercised by a "general manager" may be "*implied.*" This the Colonel swears to, as we understand his evidence. We admit the proposition of law, and the point of dispute between us seems to be whether this implication arises from the *facts* that exist in the particular case, or is a *conclusion* to be reached by a witness who does not give the *Court a single fact* upon which he *bases that conclusion.*

Whether a party was a general agent or a general manager, is a conclusion that the Court draws by applying the law to the facts. If the authority is in writing, the law as applied to the writing brings forth the result through the judgment of the Court. If it is a question of agency by implication, it is still made up of the law and the fact. A witness is entirely too accommodating who swears

he was "general manager," "general agent"—that he acquired and held such positions through the "consent" and "acquiescence" of the directors.

Such a witness may mean well, but he fails entirely to distinguish the difference between himself and the Court; the facts he may testify to and the conclusions of law that the Court may draw therefrom.

All such statements as the above are clearly incompetent.

"A witness cannot be asked a question the answer to which would be simply his conclusion or opinion." *Barnes vs. Town of Newton*, 46 *Iowa*, 567.

"A witness will not be permitted to answer a question calling for his conclusions respecting a state of facts to which *he has* testified." *Locke vs. S. C. & P. R. Co.*, 46 *Iowa*, 109.

The general rule is that witnesses are required to state facts and not opinions." 4 *Green*, 148; 9 *Iowa*, 1 *and* 337.

"Nor will the difficulty of stating such facts in full, change the rule." 28 *Iowa*, 12.

"It is not competent for an *expert* to state a conclusion which it is the peculiar province of the jury to draw from the facts. *Phillips vs. Starr*, 26 *Iowa*, 349.

That the authority of an agent to do *any* act may be implied, we have admitted, by the defendants in the adoption of their last theory. We have also shown that the authorities are all one way on this question, and the rule applies to *corporations* the same as it does to individuals. See—

Story's Agency - - - - -	p. 17 hereof
Statute of Missouri - - -	p. 17 "
United States Supreme Court - -	p. 14 "
43 New York, 271 - - -	p. 14 "
37 Conn., 520 - - - -	p. 14 "
62 Illinois, 493 - - - -	p. 13 "
62 Missouri, 392 - - - -	p. 12 "

In the last case the Supreme Court say that the *authority* of an agent is ordinarily known and ascertained *only* by implication.

21 Wend., 296 - - - -	p. 12 hereof
4 Cowen, 645 - - - - -	p. 12 "
66 Mo., 468 - - - -	p. 10 "
20 Ga., 275 - - - - -	p. 8 "

This is perhaps not half the cases that we have referred the Court to in our brief. We call the attention of the Court to the fact that the Supreme Court of Missouri stands upon exactly the same grounds as the other decisions cited.

THERE IS NO LIMIT TO THE AUTHORITY that may be thus conferred upon the agent. If it is an act that the corporation may do, or, in other words, is not contrary to and in direct violation of its

charter, it may confer the authority on its agent to act. It must of necessity act through agents, and anything that the corporation may do, it may do through its agent. Abell, Gillihan, Brosius, Brown, Miller and Darrow show that Tomlin was in the entire control of the bank, and had been for seven years; that he released and changed its trust deeds when not paid. Gillihan points out two cases of this kind within his recollection, and in one of them a *third* deed was taken, the property having been released twice without payment.

Brosius testifies that he recollects of numerous instances of this kind and shows that it was common (which the Court will be satisfied it must have been). Brown testifies of *five* distinct releases of property in one trust deed, and the records introduced by us show some *eight or ten* other instances of the exercise of such authority by Tomlin, all through these seven years, one or two of them near the date of this transaction, and one or two after it.

Besides this, there are more than one hundred and sixty trust deeds, all testifying as to his authority.

Tomlin says he did such acts when they were to be done. Tuggle testifies that he knew they were being done, and supposed all the time that Tomlin was attending to it, and that master dishonesty, Hemry, testifies to virtually the same thing.

It is distinctly shown by the evidence that the directors never did such acts. Or even consulted or suggested in relation to the same or any other part of the business.

Here is this array of evidence, and what have we against it? Simply *nothing*. True, it is, that Tomlin testifies that he was simply cashier; but, as we have seen, it makes no difference what title they may give him. We are not trying the question as to what they termed the office of this general manager of the business. The question is, what was his authority as a matter of *fact;* measured by the duties thrown upon and discharged by him.

True, it is, that McFerran testifies that he was "general manager," but we have before shown how ridiculous this conclusion of the witness is, when wholly unsupported by fact.

We claim that it would be very difficult to establish a clearer case of authority in the agent than is shown here.

It is so satisfactorily proven that it is wholly beyond the power of defendants even to claim that there is any *conflict* in the evidence. It all tends the same way.

Whenever we can bring the defendant's witnesses down to state *facts* they are *all* in our favor. We cannot think of a single fact testified to by them that is against the plaintiffs' case.

It is only their conclusions, arguments and suppositions that are against us, and these do not agree with the facts upon which they are and must be predicated.

THE TALK OF THE TRIO.

We have before referred to the talk between Hemry, Tomlin and McFerran, and have shown that if McFerran aims to testify that

Tomlin was to keep him posted fifteen days in advance of what he intended to do, that he was mistaken, for he is virtually contradicted by the other two witnesses.

Hemry testifies that there is *no record* of this confab, and that it *never was made public.*

Now let us suppose that this had been a directors' meeting, and that they had all been present, and that by proper resolution McFerran had been given the general management, (directly contrary to the statute) and it was provided in the resolution that Tomlin should not release any deed of trust, upon payment or otherwise, without the consent first obtained of McFerran. How would this affect parties who knew nothing about this *secret* resolution upon his power?

The authorities are all clearly in unison upon the point that we are not affected thereby. See—

Bank of New Haven vs. Perkins, -	p. 6	hereof
Durkin vs. Exchange Bank, - -	p. 7	"
Caldwell vs. National Mohawk Bank,	p. 7	"
Robinson vs. Beale, - - -	p. 8	"
Bridenbecker vs. Lowell, - -	p. 8	"
Bank of Illinois vs. Dunlap, - -	p. 9	"
Edwards vs. Thomas, - - -	p. 10	"
Perkins vs. Insurance Company, -	p. 12	"
Summerville vs. Han. & St. Joe R. R.,	p. 12	"
Bissell vs. National Bank, - -	p. 13	"
Smith vs. Smith, - - - -	p. 13	"
U. S. Sup. Court in M. N. B. vs. S. N. B.	p. 14	"

RATIFICATION AND ESTOPPEL.

If we suppose that the day on which this loan was consummated was the first day that Tomlin was ever in the employ of the bank, and that he had *no* authority whatever to enter into the contract that he did, still the defendants are no better off.

First—All the money that was obtained by this loan was appropriated either directly or indirectly for the benefit of the bank.

Three thousand dollars went directly into the funds of the bank, and they have been using it, making their profits thereon, and swelling their dividends thereby, for over two years.

Over two hundred dollars of the balance of the money went to pay off the debts of the bankrupt Kenny, that he owed the bank, that were *not secured in any way.* (See Tomlin, record, 216.)

The old deeds of trust and notes were cancelled by the pay stamp, by entering on the records, and by entering the same on the books of the *bank.*

These so-called officers or directors of the bank (the only duties of whose offices appear to be to attempt to avoid contracts after they

have got the money of the opposite party in their pockets), cannot deny their knowledge of *what appears on the bank books.*

United S'c'y of Shakers vs. Underwood, p. 4 hereof
Robinson vs. Beale, - - - p. 8 "
Caldwell vs. N. M. V. Bank, - p. 7 "
And other cases cited.

The entry was there made on the 7th day of August, 1879, that these old notes of Kenny *were paid*, and that the bank had got a *new note* and $3,000 in cash. There was not a man connected with that bank but what in contemplation of law knew exactly what the books showed. They cannot deny it.

They had in that bank on August 7, 1879, a new deed of trust *containing the stipulation* that it was *subject* to the deed of trust to these plaintiffs and F. & D. This was part of the assets of the bank, and every man in contemplation of law connected with that bank knew the *condition of its securities.*

This deed of trust was also on the public records from August 6, 1879.

From that day to this they have *held on* to the new deed and note. They are holding it to-day. What right have they to this property, if their theory is correct? It is their duty to speedily disgorge when they find they have any ill-gotten gains, and wash their hands of the transaction.

They have never changed their books or the entries therein. The directors have met time and again, and had this matter under advisement, and still they have taken no steps to make their books speak the truth; as they claim it to be.

The bank has paid $500 interest on this loan in January, 1880. It will not do for them to say that Kenny paid it through the bank. He did not. He had not a dollar on deposit at that time. *The bank paid it.*

When the board meets and it is claimed they repudiate this act of Tomlin's, the record shows that they *did not.*

It became their duty then, as honest men, to speak out; and a failure to do so, in an unequivocal manner, is itself a *ratification.*

They proceeded to foreclose these old cancelled deeds without *tendering back the money* they had of these plaintiffs, or taking any steps to undo that which had been done without authority.

This of itself is a ratification.

The man Hemry, who had been elevated to the presidency of this bank on account of his peculiar and befitting honesty, directed that these plaintiffs should *not* be informed, and tried to conceal the fact from them, that the bank had repudiated the contract.

This of itself was a *ratification.* (See Culver vs. Ashley, p. 11 hereof, and other authorities there cited.) It was his duty to speak out. And when the bank fraudulently conceals its dissent, it cannot be anything else in a Court of conscience but a ratification.

They cannot "blow hot" and "blow cold" in this way. It is the worst species of bad faith, and that which is most repugnant to Courts of equity.

In their old deeds of trust they had 1,080 acres of land, by the new deed they have 1,240 acres. Kenny has surrendered all the lands to them that are covered by the *new* deed and taken a lease back. Does this look like repudiating a contract?

Not only do they keep the $3,000 that was paid on Kenny's new note, but they also keep the $214 that they applied on the notes of said bankrupt that were not secured.

Could they do any more than they have done to ratify the acts of Tomlin, and to estop themselves in a Court of equity from denying this authority? We venture the assertion that the case cannot be found that has ever countenanced or upheld such an unconscionable defense.

United Society of Shakers vs. Underwood, p. 4 hereof.

They take the *benefit* of the contract charged with the *burden;* they cannot ratify that part that is beneficial and reject the remainder.

Mundorff vs. Wickersham, - - p. 5 hereof.
State Board, etc., vs. Railway, etc., - p. 6 "
(And other authorities cited therein.)
Medomak Bank vs. Curtis, - p. 7 "
Robinson vs. Beale, - - - p. 8 "

Where they only receive a *part* of the fruits of the arrangement the rule is the same.

Bridenbecker vs. Lowell, p. 8 hereof.

They cannot repudiate a ratification which they claim is made in *ignorance* of the truth, until they tender back what they have received. So held by the Supreme Court of Missouri.

Norton vs. Buell, - - - p. 9 hereof.
Culver vs. Ashley, - - - p. 11 "
Farmers L. & T. Co. vs. Walworth, - p. 11 "
Windham, etc. vs. Sprague, - - p. 13 "
Wood H. H. & M. Co. vs. King, - p. 13 "
Perry vs. Simpson W. Co., - - p. 14 "
U. S. Supreme Court in M. Nat. Bank vs. S. N. Bank, p. 14 "
(And numerous authorities therein cited.)
Eq. Ld. cases - - - - p. 18 "